Geo. A. Hormel & Company *and* Robert W. Langemeier *and* United Food and Commercial Workers International Union, Local Union No. 22. Cases 17–CA–12789, 17–CA–12828, 17–CA–13428, and 17–CA–13428–2

January 10, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On April 19, 1990, Administrative Law Judge Robert G. Romano issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed a brief in response to the Respondent's exceptions, Charging Party Robert W. Langemeier filed exceptions and a supporting brief, and the Respondent filed a brief in response to Charging Party Langemeier's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The Respondent contends that Robert W. Langemeier's May 26, 1987 involvement in affixing ''Boycott Hormel Products'' stickers on shelves in a local grocery store and his June 9, 1987 encounter with Jerry Rosenthal, a union executive board member, precluded his reinstatement and tolled his backpay at least as of June 9, 1987. We find no merit in this contention.

As to the May 26, 1987 incident, the record reveals that employee Scott Braun observed Langemeier and his wife Lois talking to each other in a local grocery store at the end of an aisle where Hormel products were shelved. When Braun returned a short time later, he noticed that one ''Boycott Hormel Products'' sticker had been placed on the shelf containing the Hormel products and another on a can of Spam, a Hormel product. The judge found that Mrs. Langemeier was responsible for these stickers and that her husband had not been involved.

As to the June 9, 1987 incident, the record reveals that after a union meeting, Langemeier laid a ''Spam Scam'' leaflet in front of Rosenthal, who was wearing a T-shirt advertising Spam, and said, ''I don't know if I would be advertising for that stuff. That can kill people.'' The judge found that this remark, made by one union member to another, did not constitute a request by Langemeier that Rosenthal generally boycott Hormel products and that the remark, as well as the distribution of the ''Spam Scam'' leaflet, was an isolated incident which was not repeated at any time or at any place.

We find that these postdischarge incidents fail to constitute a sufficient basis for the denial of reinstatement and full backpay. As the Board has stated:

> When seeking to be excused from his obligation to reinstate or to pay backpay to a discriminatee because of misconduct which was not a factor in the discriminatory action, an employer has a heavier burden than when he is merely seeking to justify the original discrimination. In the former case, he has the burden of proving misconduct so flagrant as to render the employee unfit for further service, or a threat to ''efficiency in the plant.'' [*Mandarin*, 228 NLRB 930, 931–932 (1977), quoting *O'Daniel Oldsmobile*, 179 NLRB 398, 405 (1969).]

The Respondent has clearly failed to meet this burden. As the judge found, Langemeier was not involved in the grocery store incident, and the Rosenthal incident involved an isolated encounter between two union members and was limited to a discussion of one Hormel product. Under these circumstances, the Respondent has completely failed to meet its burden of establishing that Langemeier is unfit for further employment with the Respondent. See *Owens Illinois*, 290 NLRB 1193 (1988). Further, denial of reinstatement and backpay to Langemeier would leave the effects of the Respondent's unlawful conduct unremedied and would thus fail to effectuate the policies of the Act. See *Multi-Hydromatic Welding Co.*, 113 NLRB 755, 757 (1955). Accordingly, we adopt the judge's recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Geo. A. Hormel & Company, Fremont, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Stanley Williams and May Taves, Esqs., for the General Counsel.

David F. Loeffler, Esq. (Krukowski & Costello), of Milwaukee, Wisconsin, and *James W. Cavanaugh, Esq.*, of Austin, Michigan, for the Respondent.

Bill Chapin, Esq., of Lincoln, Nebraska, for the Individual Charging Party.

Thomas F. Dowd, Esq. (Thomas F. Dowd & Associates), of Omaha, Nebraska, for the Charging Party Union.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

ROBERT G. ROMANO, Administrative Law Judge. I heard these consolidated cases in Fremont, Nebraska, on January 30–31, February 1, and March 13–17, 1989.[1] Robert W. Langemeier (Langemeier or individual charging party), filed the charge in Case 17–CA–12789 on November 14, 1985, against Geo. A. Hormel & Company (Hormel or Respondent Employer), alleging initially that Respondent Employer had engaged in certain conduct in violation of Section 8(a)(1) of the Act. Langemeier thereafter filed a charge in Case 17–CA–12828 against Hormel on Decenber 19, 1985 (amended January 29, 1986), alleging certain violations of Section 8(a)(1) and (3) of the Act that included a 3-day suspension of Langemeier on December 11, 1985, and a discharge of Langemeier on December 18, 1985. On October 6, 1986, Hormel entered, and on October 30, 1986, the Board's Regional Director for Region 17 approved a settlement agreement in Cases 17–CA–12789 and 17–CA–12828.

Langemeier subsequently filed a charge in Case 17–CA–13428 against Hormel on May 26, 1987 (amended July 13, 1987), alleging that Respondent Employer had violated Section 8(a)(1), (3), and (4) of the Act. United Food and Commercial Workers International Union No. 22 (Charging Party Union or Local 22) filed a charge in Case 17–CA–13428–2 against Hormel on May 28, alleging that Respondent Employer had violated Section 8(a)(1) and (3) of the Act. Consolidated complaint in Cases 17–CA–13428 and 17–CA–13428–2 issued on July 14, 1987, alleging certain violations of Section 8(a)(1), (3), and (4) of the Act. By answer filed on July 27, 1987, Respondent Employer, inter alia, has denined the commission of any of the alleged unfair labor practices.

On December 12, 1988, Acting Regional Director (ARD) for Region 17 revoked and set aside the above settlement agreement in Cases 17–CA–12789 and 17–CA–12828; and the ARD issued on the same day and amended consolidated cases. The complaint alleges that Respondent Employer has engaged in conduct in violation of Section 8(a)(1), (3), and (4) of the Act.

More pointedly, the complaint alleges (postsettlement) Hormel conduct in violation of Section 8(a)(1) in that Employer, by certain letter dated February 26, 1987, ordered its employee Langemier to cease engaging in, and threatened Langemeier with discharge if Langemier thereafter engaged in certain union activities and other protected concerted activities. The complaint also alleged that in similar violation of Section 8(a)(1), by certain letters dated March 25 and 30, April 2, 9, 15, and 30, and May 19, 1987, Respondent Employer has instructed its employee, Langemeier, to attend a hearing concerning Langemeier's participation in union activities and other proctected concerted activities; and, that on May 26, 1987, Respondent Employer subjected Langemeier to a hearing on, and therein interrogated Langemeier concerning, Langemeier's participation in Section 7 union activities and other protected concerted activities, including telling its employee Langemeier that Respondent Employer had engaged in surveillance of Langemeier's union activities and other protected concerted activities, all in further violation of Section 8(a)(1) of the Act. (The complaint however, does not specifically allege that Employer engaged in surveillance of certain contended union, or proctected concerted activities of Langemeier conducted at a newly opened Pathfinder Bookstore in Des Moines, Iowa, on February 14, 1987, infra.) The complaint does allege that, in violation of Section 8(a)(1), (3), and (4) of the Act, Respondent Employer had again discharged Langemeier on June 15, 1987.

The complaint alleges certain earlier (presettlement) conduct of Respondent Employer in violation of Section 8(a)(1) in that Respondent Employer, on or about late June, early July, 1985, and again on December 11, 1985, is alleged to have prohibited its employee (Langemeier) from wearing certain union insignia on Langemeier's helmet, and that on or about August 26, 1985, Respondent Employer prohibited its employee Langemeier from posting union-related material on an employees' bulletin board, and locker room walls and doors. The complaint also alleges as presettlement unlawful conduct that Respondent on December 11, 1985, the first suspended employee Langemeier, and on December 18, 1985, had discharged employee Langemeier in violation of Section 8(a)(1) and (3) of the Act.

By amended answer dated December 22, 1988, Hormel has denied the commission of any of the alleged unfair labor practices. Therein Respondent Employer has also further alleged, severally: that certain of the above alleged matters were settled by the informal settlement agreement (with nonadmission clause) entered by Employer on October 6, 1986, which included a transfer of certain amount of funds to Langemeier; that on May 6, 1987, the Regional Director had declared the settlement agreement had been performed; and that at all times since Respondent Employer's entry into the settlement agreement Respondent Employer has complied with the terms of the settlement agreement.

Respondent also affirmatively alleges that Employer's conduct therein in December 1985, was the subject of an arbitration; and, that on June 2, 1986, the arbitrator determined that under the the terms of the relevant collective-bargaining agreement the Company had had just cause to impose the sanctions it did impose on Langemeier. Respondent Employer requests the Board defer to that decision to the extent subject matter of that arbitration is presently alleged to be a violation of 8(a)(1) and (3) of the Act. The General Counsel in turn urges that the Board not defer to the Arbitrator's award, contending that under existing Board precedent the award is repugnant to the purposes and policies of the Act, in that the discipline imposed upon Langemeier for purportedly defiant gross misconduct, clearly was imposed upon Langemeier because of his continued engagement in union and/or protected concerted activity in wearing a sticker in support of Local P-9 in the Freemont plant.

Respondent Employer otherwise affirmatively alleges that Langemeier was subsequently discharged on May 26, 1987, for engaging in certain concerted, but (then) unprotected activity of organizing and participating in a national boycott of Hormel's consumer products for the purpose of undoing certain September 1, 1986, collective-bargaining agreements lawfully entered between Hormel and Local 22, and Local 9, of the United Food and Commercial Workers International Union (International or UFCW). (Local 9, is successor in name to Local P-9, previously trusteed by International, infra.)

[1] All dates are in 1987 unless stated to the contrary.

Respondent Employer argues that it had just cause to discharge Langemeier on May 26, 1987, essentially because Langemeier actively organized and participated in a concerted, but unprotected boycott of Hormel products at a time when Langemeier was a Section 2(3) employee of Hormel and while there was no active labor dispute in progress between Hormel and exclusive union representative Local 22, Local 9, or International; and at a time when each and all the above exclusive collective-bargaining Unions opposed such a boycott.

Employer further affirmatively alleges alternatively that Hormel has proceeded in a good-faith belief of Langemeier's participation in the above perceived unprotected conduct that for the foreseeable future Langemeier would be an inefficient employee who would purposely disrupt the production process because of his opposition to the 1986–1989 contract existing between Local 22 and Hormel; and, because of his commitment to a dissident political faction at the ''Flagship'' Hormel facility at Austin, Minnesota.

Additionally, Respondent Employer has raised certain 10(b) defenses; namely, that certain alleged conduct that occurred prior to January 7, December 21, or December 27, 1987, at the Freemont plant is respectively barred by Section 10(b) of the Act.

On the entire record, including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the General Counsel, Respondent Employer, and individual charging party on or about August 21, 1989, I make the following

FINDINGS OF FACT

I. JURISDICTION

Jurisdiction is not in issue. The complaint alleges, Respondent in answer admits, and/or I find on the basis of the entire record, that Geo. A. Hormel & Company is a Delaware corporation with principal office and corporate headquarters (as well as a ''flagship'' production facility) at Austin, Minnesota, and with an integrated production plant located, inter alia, at Freemont, Nebraska. During a material 12-month period, Hormel received at its Freemont meatpacking facility goods, etc., valued in excess of S50,000 directly from points located outside the State of Nebraska; and, during the same material period of time, Hormel has sold and shipped from its Freemont, Nebraska plant facility goods, etc., valued in excess of S50,000, directly to points outside the State of Nebraska. I thus find Respondent Employer Hormel is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that United Food and Commercial Workers International Union, Local Union No. 22 is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. Hormel operations

Hormel operates a number of meatpacking plants around the country. At times, and as principally material herein, Hormel operated production facilities, inter alia: (a) at Freemont, Nebraska (Freemont), where it employed (initially) approximately 800–850 employees in an appropriate unit for collective bargaining; (b) at Austin, Minnesota (Austin), where it employed (initially) a similar unit of some 1400 employees, at a comparatively new (1982) flagship facility there; and (c) a similar unit of (at least) well more than 500 employees (formerly) employed at Ottumwa, Iowa (Ottumwa). The Freemont unit employees (and separate units at a number of other plants, infra) were covered by a certain (at least) in substantial economic part, ''chain'' negotiated agreement (chain agreement), though the agreement is also in part locally negotiated, locally ratified, and later signed for individual plant and local union. A wholly separately negotiated agreement was applicable at Austin; as was (apparently) a further separately negotiated agreement applicable at Ottumwa, infra.

Employer essentially operates a hog slaughtering and processing facility in Freemont, Nebraska. Individual charging party Langemeier has been employed at Freemont, and a member of the bargaining unit there since August 10, 1964. Langemeier's demonstrated strong feelings against a union's concessionary bargaining led to an unquestioned union activism in that regard. That activism over time passed from that of a provincial plant interest to an activism that would lead him to allege with, and commit his support to, the certain anticoncessionary collective-bargaining stance, strike, and subsequent struggle of Local P-9 (Austin) against Employer Hormel; and eventually involve him otherwise in employee attempts to serve similar interests beyond his own meatpacking industry.

Employer does not contest Langemeier's (or his wife Lois') union activism, but contends that Langemeier was a union activist that is also shown of record in the end to be an unprotected boycotter. It is uncontested that Langemeier's wife was not only an open activist for, and supporter of, P-9 adherents, her husband, and others supporting P-9, but, although seemingly disputed as to degree by General Counsel, I find, infra, she was a declared and clearly open boycotter of Hormel products (at least) in certain of the times principally material herein.

The General Counsel nonetheless contends, centrally, Langemeier himself, is no boycotter. Langemeier has generally explained at hearing that he supported P-9's strike essentially over imposed (wage and benefit) concessions, and, certain safety factors, because if P-9 took the concessions (in 1985), then in 1986, Local 22 would have the same or more imposed on them. With regard to boycotting however, Langemeier essentially asserts that he didn't believe in boycott action; and that he personally felt it was ineffective; but, that he didn't make policy for Local P-9; that he respected others who held a contrary view; and (essentially) that he didn't feel obliged to confront those with whom he agreed in the main in their stance against concessionary bargaining, who also espoused a particular boycott view that he did not share. The Employer's case presentment that Langemeier is himself a boycotter is essentially largely based on accumulative circumstantial evidence of Langemeier's conduct engaged in with open boycotters, and the drawing of urged reasonable inferences arising therefrom, i.e., that Langemeier in his zealous support of P-9, in fact was himself a boycotter (albeit initially protected), and became an unprotected boycotter.

2. Union representatives

UFCW Local 22 and its predecessor (insofar as pertinent) Meatcutters Local 216 (then apparently Amalgamated Meatcutters and Butcher Workmen of North America, Local 216) have effectively represented a unit of Hormel employees at Freemont, Nebraska, since Local 216's charter in 1947. From 1965–1967 through the early to midseventies, Langemeier served as a union steward on an extra gang there. Langemeier also served on the executive board of Meatcutters Local 216 during his entire employment tenure until a later merger (with Retail Clerks) in 1981. Langemeier thereafter continued to serve on Local 22's executive board for a couple of years. From that time until the fall of 1984, Langemeier's union activities within Local 22 were uneventful.

Since October 1, 1981, and in all times material, Robert ''Skip'' Niederdeppe has been the president and a business representative of Local 22. Niederdeppe had earlier served as the secretary-treasurer of Local 216, and, since 1979, as a business representative. (Local 22 represents other than just Hormel employees.) Although Niederdeppe was not involved in Hormel-Union negotiations for a new collective-bargaining agreement that was concluded in 1979, he was involved in all subsequent negotiations for Local 22, along with Local 22's established bargaining committee, of which Langemeier was not a member. In that manner, Niederdeppe was involved in the negotiation of a certain wage (and apparently benefit) concessionary agreement in 1984. Niederdeppe has spread of record a sumary of bankruptcy effects on collective-bargaining agreements in the industry; and widespread plant closings, purchases, and mergers in the meat processing industry that molded concessionary bargaining in this period. In general Niederdeppe is confirmed by Ken Young, employment (personnel) manager at Freemont, who adds that in earlier years Hormel had tried to just hold the line on existing wages and benefits, but then later was forced also to ask for concessions. In any event, pertinently, Niederdeppe recalled a wage concession negotiated with Hormel at this time of from $10.69 to $9 an hour that was applicable inter alia at Freemont.

Since at least 1947, Local P-9, and subsequently since May 1986 Local 9 represented a production unit of Hormel employees at Austin, Minnesota. (International placed its Local P-9 in trusteeship in May 1986, infra, and, sometime in June or shortly thereafter renamed its trusteed Local P-9, Local 9.) In times material (1985), and up until Local P-9's trusteeship, in (1986) Jim Guyette was elected president of Local P-9; Lynn Huston was P-9's vice president; and, Kathryn Buck was financial secretary of Local P-9.

3. Chain and separate agreements

In the more immediate times past, Hormel and the Union had frequently bargained a chain agreement for a number of Hormel plants, but which is then further negotiated to final local agreement, thereafter put to Local union membership vote(s) for ratification; and, eventually signed individually (apparently) by respective plant and local union. (There is no certified multiplant unit, and the Company insists it does not bargain on a multiplant basis.) In any event, such a chain and locally approved collective-bargaining agreement(s) was (were) negotiated in 1979, modified in 1982, and modified again (via wage reopener) in 1984. That Chain Agreement governed, inter alia, the Freemont unit, with contract coverage extending through September 1, 1986.

At least in part because of the interim construction (in 1982) of a new production plant facility at Austin where Hormel's corporate headquarters is (also) located, Hormel and P-9 had negotiated an agreement governing the Austin, Minnesota plant, that was separate and apart from the chain agreement that governed certain of Hormel's other plants. Its expiration was in August 1985.

The chain agreement that covered, inter alia, Freemont, contained a wage reopener provision that was effective in August 1984; and, very significantly, the separate agreement applicable to the Austin plant, contained certain so-called ''me-too'' language that Employer contended, and Local P-9 contested had the effect of causing certain (wage concession) agreements negotiated later (in October, 1984), when ratified (by the several affected locals), to be not only applicable to the several other plant locations under the chain agreement, but, when ratified by them, to be also thereby made applicable to the Austin unit employees, by virtue of the contractual effect of the ''me too'' language in the Austin contract.

4. The 1984 wage reopener concessions

Midterm negotiations were conducted on the chain agreement by Hormel and the Union, which resulted in a negotiated accord being reached by the parties in October, 1984. The accord reached provided for an initial reduction in wages (and benefits) above noted. However, before such a negotiated contract becomes effective and binding, it must be also ratified by vote of the Local Union's membership. In October 1984, Langemeier was dipleased with Local 22 presenting only a ''summary'' of Hormel's negotiated wage reopener proposal for the consideration of unit employees. At that time Langemeier began to share his concern openly with other fellow employees, before the ratification vote.

During one such employee discussion that Langemeier held on apparently the day of the Freemont contract ratification, October 15, 1984, on the matter of the desirability of unit employees being provided with a more detailed explanation of the wage proposal agreement before being asked to vote on it, Langemeier met (then) Freemont employee Jerry Rosenthal, who had previously been employed by Hormel at Austin, and there been a member of Local P-9 for some 10 years.

Rosenthal informed Langemeier that he understood Local P-9 was having a meeting on the subject that day. Rosenthal then told Langemeier that right after Rosenthal voted on the contract (at the Freemont union hall) that day, that Rosenthal was going to drive to Austin to attend P-9's meeting on the wage reopener accord. Langemeier aked if he could accompany Rosenthal (and certain others), and, upon receiving Rosenthal's approval, Langemeier did.

Rosenthal drove the approximately 300 miles from Freemont, Nebraska, to Austin, Minnesota. The other Freemont employees who accompanied Rosenthal and Langemeier were Randy Sanders, who had transferred to Freemont when a plant in Mitchell, South Dakota had closed; and John Pollard and Frank Bit, who had transferred to Freemont when a plant at Fort Dodge, similarly closed.

Local 22 (and the other affected Locals) ratified the negotiated October 1984 wage (and benefit) reduction accord. Respondent Hormel, over Local P-9's objection, subsequently implemented the lower wage rates of the negotiated and ratified new chain agreement, also at Austin, on the basis of the ''me-too'' language in Local P-9's separate agreement with Hormel. (E.g., the wages at Austin would change with a wage change being made effective at three other major factories.) Local P-9 promptly grieved the matter, through arbitration. P-9 lost.

5. Local P-9's engagement of a labor consultant, Corporate Campaign

Local P-9 is characterized herein without apparent contest as one of the oldest locals representing employees in the meatpacking and/or meatcutting industry. In October 1984, Local P-9 contacted, initially engaged, and, apparently in December voted to hire, and, in any event, did hire Corporate Campaign, headed by Ray Rogers, as a labor consultant to direct public relations campaigns against Hormel's implementation of the lower wage rates at Austin.

Corporate Campaign was hired because it had been earlier apparently successfully active in a J. P. Stevens' labor dispute. In any event, upon hire, Corporate Campaign first designed a program to create a negative public opinion about certain of Hormel's business relationships, e.g., the First National Bank of Minnesota (Bank), and that the bank's purported role as a principal financier of Hormel's operations. Corporate Campaign initially sought to put pressure on the Hank to stop lending money to Hormel by use of public advertising material (e.g., car bumper stickers, buttons, etc.) to the effect that ''1st Bank and Hormel (were) Unfair.'' For months these stickers were prevalent not only in Austin, but in the Freemont plant, and Freemont public areas.

6. The Austin United Support Group (AUSG)

In the fall of 1984, spouses of Austin unit employees and other sympathetic individuals from surrounding communities formed the Austin United Support Group (AUSG). AUSG's function and purpose initially was to elicit public support for Local P-9. Later, in P-9 strike circumstances (in 1985), AUSG rendered food, clothing, subsistence, and certain other support programs, infra, to Local P-9, and the striking Austin Unit employees that Local P-9 then represented. AUSG was very active, and very supportive of P-9's struggle. Barb Collette was very active as a spokesperson for AUSG.

In December 1984, Langemeier returned to Austin, where he participated in a rally to garner support for Local P-9's struggle against a grant of wage concessions. A number of trade unionists, both inside and various trades outside the Hormel chain, attended this rally, with similar purpose. P-9's use of Corporate Campaign and its strategy was discussed. Mrs. Langemeier made the trip with her husband. She visited with members of AUSG.

7. Freemont United Support Group (FUSG)

In February 1985, Langemeier's wife Lois, along with about 15–20 other individuals, mostly spouses of unit employees at Freemont, formed a Freemont United Support Group (FUSG) modeled on AUSG. As with AUSG, no Hormel employees were members of FUSG. Mrs. Langemeier has acknowledged that (at least in part) Hormel employees are consciously not admitted to membership in FUSG so that they would not be responsible for any FUSG actions. FUSG would grow to a high of some 55–60 active members in 1985, before member interest would wane in that organization. However, in March 1985, FUSG engaged in certain leaflet campaigns in support of Local P-9, and Local 22 at a Hormel-sponsored Midwest Hog Show at Freemont. Mrs Langemeier's leafletting at this event came to the attention of Hormel officials, when Hormel management officials ordered her off the rented premises.

In April 1985, the Langemeiers returned to Austin where they were able to hear International Vice President Louie Anderson's address to P-9's membership about P-9's upcoming negotiations with Hormel. Upon return to Freemont, Langemeier and Rosenthal posted a notice in the Freemont plant inviting Local 22 members to view a tape made of Hormel's most recent stockholders' meeting held in Atlanta, Georgia, and of the corresponding P-9 protest rally held in Austin. Engagement in this action brought Langemeier to the direct attention of Young as the new personnel manager at the Freemont facility, only recently arrived from Atlanta. Young exhibited a degree of hostility to this particular activity.

8. The initial Langemeier-Young confrontation

In February 1985, Ken Young had transferred from Atlanta, Georgia, to the Freemont facility with assignment as employment or personnel manager. Shortly after return from Austin Langemeier posted on the employees' bulletin board an invitation to Local 22's members to see a showing of the above videotape. Langemeier was promptly instructed to report to the personnel manager's office. On arrival Young asked Langemeier if he was going to try to cause trouble by showing this video.

Langemeier recognized Young from the video, and replied no, nothing of the sort. Langemeier said, we would also like answers to some of the questions asked; we felt it was important that our (Local 22's) membership see the questions that were put to the chief executive officer of the Company, and his answers; and that they see, as well, the (related) P-9 (protest) rally that took place at Austin. Both Langemeier and Rosenthal subsequently showed the above videos to Local 22's membership at the Union's hall in Freemont. However, Local 22 did not sponsor the showing. Rather Langemeier and Rosenthal obtained an authorization for the use of the hall for the showing from another labor organization that also used the hall.

9. The June 1985 P-9 picnic; and the initial effort at organization of National Rank and File Against Concessions (NRFAC)

Apparently in late June 1985, Langemeier and his family attended a P-9 picnic held in one of the parks in Austin. A few days before that P-9 president Jim Guyette had met with a number of other trade unionists who had assembled there from auto, steel, shipbuilders, clothing, and textile workers, and the bakery, confectionary, and tobacco industries. Langemeier met Guyette personally for the first time at this picnic. Guyette invited Langemeier to meet some of the above people. When Langemeier did, Langemeier learned

that these individuals were trying to establish a group to be called National Rank and File Against Concessions (NRFAC); and that they were there at the time discussing the possibility of a conference on that subject to be held in Gary, Indiana, in August 1985. Langemeier has testified, and I find credibly so, that he was impressed with that effort.

In this same picnic, Langemeier also met Bill Cook who (then) worked in Hormel's Ottumwa, Iowa plant. The two spent considerable time together, and there developed between them (over time) a very good friendship. In Austin ''P-9 Proud'' union stickers were on sale. Langemeier purchased some.

Local P-9's executive board regularly met with AUSG and explained the issues to that organization. In the same picnic, FUSG invited Local P-9 (president Guyette and P-9's oard) and Corporate Campaign (Rogers) to come to Freemont and discuss the issues there with FUSG members, and interested Freemont employees. The plan also called for Guyette to have an opportunity to meet Niederdeppe.

10. The Langemeiers' committed support of Local P-9 comes to the direct attention of

a. *Langemeier's wearing of a P-9 proud sticker in the Freemont plant*

On Langemeier's return to the Freemont plant, on the following Monday, Langemeier affixed a ''P-9 Proud'' sticker to his personally owned (lightweight) bump hat, or helmet, which act in Langemeier's asserted perception said to others (only) that Langemeier was proud of the workers in the P-9 plant. At the time, Langemeier was working in the sausage department, under direct supervision of Lowell Gunderson. Don Cole, a cosupervisor in the sausage department, came up to Langemeier almost immediately. Cole instructed Langemeier to report to the personnel office. Langemeier did.

On arrival Young directed Langemeier to remove the ''P-9 Proud'' sticker. Langemeier asked for what reason. (Langemeier has denied that the wearing of the sticker had caused any problems among the work force.) Young replied it was Company policy that he could not wear that on his hat. Langemeier told Young that a number of other workers had different logos, identifying some, viz, religious, humorous, and ''Go Big Red'' (referring to the University of Nebraska's football team). Langemeier asked if Young had any company policy documentation that Young could produce that Langemeier could see. Young replied the Company had a policy, but Young was not going to go the trouble of dragging it out. Young then said, ''I've ordered you to take the sticker off.''

Langemeier then told Young that Langemeier thought that Young was violating Langemeier's rights by demanding that Langemeier take the ''P-9 Proud'' sticker off, but that he would remove it, and that he would file a grievance on Young's order to remove it. He then removed the sticker, and he later filed a grievance on it with Irven Shadboldt, assistant chief steward. The grievance by a mutual agreement of Union and Employer was carried over to the Employer's next fiscal year, that commenced in October 1985. According to Langemeier's understanding, the grievance still remained pending. However, the grievance remained pending only through February 19, 1986, when it was granted by the Employer in connection with a certain memorandum of understanding reached between Employer and Union, governing both future allowable wearing of union insignia, and use of Freemont employee bulletin boards, discussed further infra.

b. *Mrs. Langemeier's arrangements of a meeting place; and the invitation extended to Young*

Upon her return from Austin, Mrs. Langemeier made an initial arrangement for the use of a local high school auditorium for the P-9 addressment of FUSG, etc., in Freemont. Mrs. Langemeier also went into the plant and spoke to Young about the meeting. Mrs. Langemeier handed Young a related (publicity) leaflet; and she invited Young to also attend the meeting, because they (FUSG) had so many questions.

Young asked Mrs. Langemeier why they wanted to cause trouble. Mrs. Langemeier replied that they were not trying to cause trouble. Young then asked, ''well, what are you so unhappy about then?'' Mrs. Langemeier replied, ''we [sic] don't have a signed contract''; there are many questions unanswered; and (specifically), they would like to know about health benefits. According to Mrs. Langemeier, Young then asked, ''well why don't you ask 'Skip' [Niederdeppe].''

FUSG's use of the high school auditorium fell through for an undisclosed reason, though with apparent local school board approval. Thereafter Mrs. Langemeier arranged for an alternative rental use of Christianson Field in Freemont; and the meeting was held there as planned.

11. Local P-9's strike; and boycott policy

The parties have stipulated that International issued a strike sanction to Local P-9 to strike (only) Hormel's Austin plant. The separate agreement between Local P-9 and Hormel expired on August 9, 1985. On August 17, 1985, Local P-9 struck the Hormel plant in Austin in support of P-9's nonconcessionary contract demands. The strike was effective. Hormel took the strike at Austin; and shut down its production at Austin. Hormel did not hire any replacements at Austin throughout the remainder of 1985.

The 1979 Chain Agreement (as modified in 1982, and 1984) was in effect, inter alia, at Freemont. Hormel countered the strike by transferring Austin production, inter alia, to its Freemont facility. Freemont became very busy; and, over time, it resultingly built up its employee complement substantially. Freemont also has a guaranteed wage provision in its contract for unit employees, which carries increasing heavy penalties for Employer for hours worked by employees in excess of established standards. An increase in the size of the work force would tend to alleviate that effect. Over time, Freemont built up its employee work force on both accounts, and did well into its (1985–1986) fiscal year.

Employer would appear to contend, and General Counsel to concede, and in any event on the weight of more credible evidence of record, I find, that almost contemporaneously with the advent of the Local P-9 strike in August 1985, Corporate Campaign and AUSG embarked on a campaign to boycott Hormel products as part of its public support strategy; and, as Langemeier acknowledged, as one action designed to put more economic pressure on Employer. Members of Local P-9, and of AUSG, and to some extent FUSG urged the boycott of Hormel products primarily through mes-

sages in leaflets and flyers, and display of stickers that said, in white lettering on dark blue background, ''Boycott Hormel Products.''

12. The continued restrictions imposed on Langemeier's use of the Freemont employees' bulletin board

According to Langemeier, for the last 20 years or more, employees at Freemont had had free access to an open plant bulletin board that was located just inside the main entrance to the Freemont plant. The employees' bulletin board there was composed of an open, 4-by-8 foot cork-type board divided by wood into columns that served for posting of the Local's and the Employer's notices to employees. A section of the board was also available for employees' notices and messages generally. It appears to be uncontested, and (again) in any event I find on weight of more convincing evidence of record that by longstanding practice, Employer had allowed its employees to post, and did not require its employees to have the prior approval of Employer, or the Union to post their material on the open board. The employees also regularly posted (I find) similar notices and information (newspaper articles, for-sale notices, social announcements, etc.) on the walls and doors of the employees' locker rooms.

a. *The notice posted of a P-9 informational picket line at Freemont*

Shortly after Local P-9 struck Austin, Langemeier posted a notice on the employees' bulletin board under the union column, and on the employees' locker room walls, announcing that Local P-9 would be setting up an informational picket line at Freemont on Thursday, August 29. The notice specifically advised Freemont employees that the picket line was solely informational in nature, and they were to report to work as scheduled. The unsigned notice also invited the Freemont employees to meet the Local P-9 menbers in the evening at a local trailer court. Within 2–3 hours of its initial posting by Langemeier, the notice was removed.

At his break, after noticing the removal, Langemeier first reposted the notice. Langemeier then promptly notified Young that a notice that he (Langemeier) had posted on the employees bulletin board, had been removed. Young informed Langemeier that Young had removed the notice; and, that he (Young) was not going to allow that notice to be posted. Langemeier told Young that it was important that Local 22 members get this message; and, Langemeier reminded Young that there had been no prior restrictions on such employee postings to the bulletin board. As Langemeier left Young's office, Langemeier came upon steward Shadboldt in the hall and while they were discussing the notice removal, they observed Young walk out of his office, go straight to the bulletin board, and (again.) remove the P-9 informational picket line notice that Langemeier had just reposted. Langemeier told Shadbolt that Langemeier wanted a grievance filed on it, because (Langemeier felt) Employer did not have the right to take down an employee's notice to employees when posted on the employees' bulletin board.

b. *Local P-9's informational picket line at Freemont*

On August 29, 1985, Local P-9 officers and some 200 members established an informational picket line at the Freemont plant. Mrs. Langemeier met the group outside the Freemont plant, with some earlier prepared picket line signs. The P-9 informational picket line did not disrupt any work at the Freemont plant. After work, Langemeier openly visited with Local P-9's striking members as they distributed literature about their strike at Austin to interested Freemont employees.

c. *Other Langemeier attempted postings in September 1985*

In early September 1985, Langemeier posted a union article he found in labor magazine for the Freemont employee-members to read. The article posted was entitled, ''Observing Picket Lines.'' Langemeier also posted a notice about International Vice President Anderson's upcoming September 8 speech to Hormel employees in Ottumwa, with (Langemeier) invitation for Freemont employees to attend. Langemeier also posted a thank-you note from sister Local P-9, for the display of support received from Local 22. Employer removed the notices within hours of their posting by Langemeier.

Langemeier effectively acknowledged that everyone knew that Local P-9's picket line would at some point be extended to Freemont. In any event, on October 5, 1985, International reaffirmed to Local P-9, that Local P-9's strike sanction was limited to Austin.

As earlier noted, Langemeier as an individual charging party filed the original charge in Case 17–CA–12789 on November 14, 1985. The charge alleged that Respondent Employer had violated Section 8(a)(1) of the Act by removing the certain union-related articles from the employees' bulletin board in August and September 1985. The charge did not explicitly make any reference to Employer's earlier order that Langemeier remove the ''P-9 Proud'' sticker from his helmet, which was still a matter of pending grievance.

13. The December 11, 1985 discharge of Langemeier

By virtue of the increased employment complement at Freemont, the allowable number of certain union offices increased. Related internal union office election campaigns in Local 22 took place in December 1985. At that time, Rosenthal was a candidate for union office. On the afternoon of December 10, 1985, Langemeier first observed some employees wearing silver and blue adhesive stickers that read ''Vote Rosey.'' The ''Vote Rosey'' stickers were in style very much like Langemeier's earlier worn ''P-9 Proud'' sticker. Langemeier asked his supervisor, Lowell Gunderson, a cosupervisor in the sausage department, about the propriety of employees wearing the ''Vote Rosey'' stickers under the Company's policy. According to Langemeier's undenied testimony, Supervisor Gunderson told Langemeier at the time that he knew of no company policy that prohibited the wearing of the stickers; and that he thought they were okay.

At this time Langemeier had also heard nothing about his grievance filed over Young's earlier midsummer order given to Langemeier to remove the ''P-9 Proud'' sticker that Langemeier had at that time affixed to his personal bumper helmet. On December 10, 1985, Langemeier reaffixed a ''P-9 Proud'' sticker to his helmet. Langemeier wore it on the plant floor for the last 45 minutes of this shift that day.

On December 11, 1985, Langemeier again wore his helmet with the ''P-9 Proud'' sticker attached out on the work floor.

Within an hour supervisor Gunderson told Langemeier that Langemeier had to remove the ''P-9 Proud'' sticker, ''per instructions.'' Langemeier replied, it was funny how it was okay for others to wear stickers, and now, with his wearing of a ''P-9 Proud'' sticker there was suddenly a policy about removing it. In any event, Langemeier then told Supervisor Gunderson that he felt strongly about his right to wear the ''P-9 Proud'' sticker, and the only way to get this litigated was for Gunderson to fire him for wearing it. Gunderson however did not do so. About 45 minutes later, Supervisor Cole directed Langemeier to report to Young's office. On arrival Younq and Lanqemeier were alone in the office.

Young told Langemeier that they had been through this (before); and, Young (again) ordered Langemeier to remove the ''P-9 Proud'' sticker. Langemeier (again) asked to see the Company's policy that prohibited Langemeier's wearing of the sticker. Young told Langemeier the Company had such a policy, and that Young was not going to produce it. Langemeier then told Young that supervisor Gunderson had told Langemeier it was okay to wear the ''Vote Rosey'' stickers; and Langemeier told Young that Young was treating Langemeier disparately by singling him out (to not wear a ''P-9 Proud'' sticker) while allowing others to wear their stickers. According to Langemeier, Young (simply) said he did not want anything from P-9 coming into the (Freemont) plant.

Langemeier then said that he didn't think he had to remove the sticker. Young said, ''That's it, you're fired. Leave the premises.''

Young also testified that he didn't later inquire of Gunderson about his remarks to Langemeier, as Young issued an order to his floor supervisors to have the ''Vote Rosey'' stickers removed; they were removed; and he viewed the issue as then mooted. It appears uncontested however, that between the June and December 1985 Langemeier ''P-9 Proud'' incidents, Employer had made no effort to remove other logos from employees helmets, etc. Moreover, Employer otherwise has effectively admitted that it enforced a rule that shut down its employees wearing of Local P-9 supportive insignia; and equally notable, it did not contend that Local 22 had (at that time) agreed to its actions.

Langemeier left Young's office. As he did so, he met a union representative, reported his discharge, and the circumstances. In about 45 minutes the Union had arranged a meeting with Employer. Present were Local 22's president Niederdeppe, union time checker Ray Nelson, Chief Steward Dick Wiota, Langemeier, and Young.

Young again ordered Langemeier to remove the ''P-9 Proud'' sticker. Langemeier again requested to see the Company's policy that required its removal. Young said he would not produce it; and Langemeier (still) did not remove the ''P-9 Proud'' sticker. However, Langemeier then said that he would remove the ''P-9 Proud'' sticker, if Young would guarantee arbitration of his grievance over the first sticker removal incident some 6 months earlier, asserting the delay in resolving that grievance was unreasonable. However, Langemeier left at that point to take counsel with some of the union representatives outside, before Young had addressed the latter proposal.

Niederdeppe apparently remained; and he first reminded Young that there were emblems and logos all over the plant. Young said he could not allow Langemeier to work with the sticker on. Young then said that the ''P-9 Proud'' sticker was disparaging to the product; and the slogan insulted Hormel. As noted however, the central facts of an essentially disparate Freemont treatment of an employee's wearing of the ''P-9 Proud'' union insignia are not in dispute. Hormel stipulated candidly at hearing that (at least at Freemont) it had singled out the ''P-9 Proud'' sticker for such restriction, while it permitted many other logos to be used at work. It appears that Langemeier has testified also without contradiction that not only employees at Austin, but employees at Ottumwa wore ''P-9 Proud'' stickers in the plant without restriction.

On this record, I have no doubt, and I find infra, that the employer disparately enforced a rule against Freemont employees, and against Langemeier in particular, in respect to their wearing and/or use of union insignia that were on their face supportive of Local P-9, and not shown on this record to have been disruptive of plant discipline, or Employer's production.

In Langemeier's separate consultation with the union representatives on December 11, 1985, Niederdeppe later gave Langemeier an assurance that the (present and/or prior) grievance would be arbitrated as soon as possible. With Local 22's assurance that his grievance would now be promptly arbitrated, Langemeier then told the union representatives, that if it was his job or the sticker, he would remove the sticker. With that, Langemeier removed the sticker from his hat.

Niederdeppe promptly returned to Young's office to inform Young that Langemeier had removed the sticker. According to Niederdeppe, Young at that time was on the phone; and, Young asked the Union to wait. Niederdeppe waited until Young was finished. After 5–10 minutes, Niederdeppe told Young that Langemeier had removed the sticker. Young told Niederdeppe, that even though Langemeier had removed the sticker, Langemeier was ''done''; and Young did not want Langemeier in the plant. According to Langemeier, Langemeier left the plant that day understanding that he had been discharged for wearing the ''P-9 Proud'' sticker; but, not for Employer claimed insubordination, because Young had not mentioned that to him at the time.

At Niederdeppe's request, Young subsequently produced a copy of the written sticker policy on December 12, 1985. The written policy statement itself is dated October 8, 1985, with copy delivered at that time to several plant locations; thus, after the initial Langemeier incident. Young asserts that Niederdeppe had known of the policy because Young had shown it to him when Young received it. Though reference is made in the document to the statement of policy on restricted wearing of union insignia to Local Union insignia and as being a prior established policy; if it was prior policy (I find), it was not one followed at Freemont. Moreover, it was, and continued to be inconsistently applied elsewhere. Neither does Employer even contend it was agreed to by Niederdeppe, prior to February 19, 1986.

Although Langemeier was not aware of it at the time he was discharged, another Freemont employee, Donna Niese, had previously asserted a right to wear ''P-9 Proud'' sticker; and Niese had also initially refused Young's demand that she remove it. However, Niese, in the presence of Young and a night union steward, did remove the sticker; and she was not disciplined. Rosenthal had a ''P-9 Proud'' sticker on his

lunchbox; and when he was directed to remove it, Rosenthal did. Both Niese and Rosenthal incidents occurred after the first sticker removal incident with Langemeier; and before Langemeier's discharge.

Finally, Employer would view Langemeier's refusal to timely remove the union sticker as a separate act of insubordination. General Counsel argues to the contrary that Langemeier's actions in a maintenance of the right to engage in the protected act of wearing union insignia even in the face of Young's order to remove it, in the circumstances of this case, is inseparable from Langemeier's statutory right to do so.

14. The union-company efforts at settlement and arbitration

Young testified that Langemeier's long years of service were immediately taken into account in an effort to resolve the matter of his discharge for gross misconduct. By letter dated December 13, 1985, Young offered to the Union to reinstate Langemeier on December 16, 1985, with provision to treat Langemeier's period off between December 11–16, 1985, as a period of unpaid suspension, but that Langemeier's reinstatement would be with two nongrievable strikes to be assigned against Langemeier. (Award of a third disciplinary strike within a 12-month period would warrant a termination of an employee, even one with 21 years' service.) The offer was unacceptable to both Langemeier and the Union; and, the discipline imposed at that time proceeded as a discharge on its way to arbitration.

As noted, in the interim, Langemeier as an individual charging party filed an 8(a)(1), (3), and (4) charge inter alia on Employer's alleged unlawful suspension [sic] of him for wearing a ''P-9 Proud'' sticker.

15. Developments

a. *At Austin*

In December 1985, International recommended that Austin P-9 membership accept a certain proposed contract as last negotiated by the parties. Local P-9's membership (again) did not ratify the concessionary contract negotiated. Local P-9 and Hormel negotiators would meet for the last time on January 11, 1986.

When the last negotiation meeting conducted with Local P-9 on January 11, 1986, also did not produce agreement, Hormel announced that it would open its Austin plant on January 13, 1986. At that time Hormel commenced hiring permanent replacements at the Austin plant. Later, with some 450 Austin unit employees crossing P-9's picket line at Austin, Hormel resumed production at Austin, having replaced some 650 of the (as many as 850–950) remaining striking P-9 member-employees employed at Austin. The record indicates that due to certain operational changes (infra), Employer's apparent prestrike Austin work force of some 1400, subsequently peaked at 1100 in the reopened Austin plant. Hormel put the 650 (or more) replaced employees on a preferential hiring list (phl), that due to effects of retirements, and attrition from employees securing employment elsewhere, but not any apparent occasion of phl recall, presently numbers some 500.

b. *At Freemont*

(1) Extension of a P-9 picket line

On January 27, 1986, without International authorization, Local P-9 extended its picket line, inter alia, to Normel's Freemont plant. The 1979–1986 (as renegotiated '82, '84) chain agreement in effect at Freemont through September 1, 1986, did not prohibit a sympathy strike by Freemont employees. Some 80–100 (of the 800–850) employees then actively employed at Freemont, including Langemeier, initially honored, and thus engaged in a sympathy strike, in support of Local P-9's picket line established at Freemont. (Apparently at some point in early 1986, more than 500 Hormel employees employed at Ottumwa, Iowa, would also honor a P-9 picket line when established at Hormel's Ottumwa, Iowa plant.)

(2) Langemeier files amended charges

On January 29, 1986, individual charging party Langemeier filed an amended charge in Case 17–CA–12828. Langemeier alleges therein that Hormel had violated (only) Section 8(a)(3) and (1) by Young's actions, inter alia, in disparately and discriminatorily suspending [sic] Langemeier for affixing a ''P-9 Proud'' sticker to his helmet in December 1985.

(3) Freemont replaces its strikers

Freemont management notified all its striking employees that it regarded them as economic strikers, and as such would replace them if they did not return by a certain time. Within a few days of P-9's establishment of the unauthorized picket line at the Freemont plant, and International's earlier and continued reaction thereto, a significant number of the Freemont employees who had initially engaged in the sympathy strike, returned to work. Rosenthal confirmed International gave prenotice that Local P-9 was not authorized to extend its picket line to Freemont, and that, should it do so, employee-members should not honor the line, as it was not authorized, but should go to work. Local 22 adopted the same position. Rosenthal testified that with his recent election to Local 22's executive board, Rosenthal decided he should go to work; and he did not honor P-9's picket line at all.

Langemeier however, and approximately some 44 other Freemont sympathy strikers continued to honor P-9's Freemont picket line. With possible exception of some of the (15–20) Freemont strikers earlier returning to work thereafter, Hormel replaced all the Freemont sympathy strikers, and placed them all on a Freemont phl, including Langemeier, though I find, only in accordance with the following additionally determined circumstances.

(4) Employer rescinds Langemeier's discharge; and, Langemeier exercises right to honor P-9's picket line

On advising Young in mid-December 1985, of Langemeier's and Local 22's rejection of Young's initially proffered settlement as unacceptable because the Employer's imposition of two strikes (discipline) made Langemeier too susceptible to a future adverse action, Niederdeppe also told Young that Langemeier's terms for a settlement were rein-

statement with no strikes, and no loss of rights, wages or benefits.

On February 13, 1986, at about 5:30 p.m. Young and Cole hand-delivered a letter to Langemeier's *house*, which stated that the Company ''has agreed to terms of your reinstatement.'' The letter otherwise directed Langemeier to report for work at 6:30 a.m. the next day; and that a failure to report will be considered as a voluntary quit.

At 10 p.m. that same day, February 13, 1986, Langemeier hand-delivered his response to the Company at Young's *home*. Therein Langemeier stated his acceptance of reinstatement, and his intent to return to employment when there is no picket line at the Freemont plant. Langemeier then declared an exercise of his Section 7 right to honor P-9's picket line; and, Langemeier explicitly denied any election on his part to resign, or quit; or to waive or withdraw his unfair labor practice charges, or his claim to backpay. In regard to his lost wages, Langemeier asked, if the Employer decided to pay them (backpay), to forward his lost wages to his home address. By letter dated February 17, 1986, Employer notified Langemeier that Employer had permanently replaced him. Employer did not forward any wages to Langemeier.

(5) Arbitration and deferral

General Counsel contends that Hormel's December 1985 discharge of Langemeier was unlawful; that Respondent Employer had maintained a position throughout this period of time that Langemeier's December 11, 1985 discharge would be converted to a suspension effective from December 11, 1985, until February 14, 1986, without pay; and, that Langemeier's reinstatement on February 13, 1986, would be with two disciplinary strikes.

Hormel acknowledged relatedly that on February 13, 1986, on its own initiative, Hormel had rescinded the discharge of Langemeier; and, that it thereafter treated him as an economic striking employee who may be put to work if be unconditionally ends the strike, and work is available. Hormel has also acknowledged in brief that it imposed two disciplinary strikes against Langemeier, and that it had treated the period of December 11, 1985, through February 13, 1986, as a period of suspension, without pay.

Employer further acknowledged at hearing and in brief that both Langemeier and the Union (Local 22) regarded Employer's imposed sanctions against Langemeier as being in violation of the just cause provision of the existing (Freemont) contract; and, accordingly, they had promptly pursued the matter by grievance filing, and processed it (the grievance) through arbitration. Niederdeppe testified explicitly and with support of Arbitrator recitement of the issue presented to him, that a discharge was not an issue submitted to the arbitrator.

The arbitration was scheduled, and subsequently held on April 10, 1986. In the interim, General Counsel had initially deferred any further proceeding on the 8(a)(1) and (3) unfair labor practices alleged in Cases 17–CA–12789 and (amended) 17–CA–12828, pending the outcome of that arbitration.

(6) Negotiated memorandum of understanding on wearing of union insignia, and use of employee bulletin boards

On February 19, 1986, Local 22 and Employer negotiated and reached a memorandum of understanding in regard to limitations on items that Freemont unit employees could wear on hard hats that were in the future to be supplied by Employer; and in regard to a mutually acceptable procedure for a controlled use of bulletin boards. Thus, Local 22 and Hormel negotiated and executed an agreement, inter alia, providing for employee wearing of Local union insignia only, and terms governing a secured union bulletin board for official union notices; with all other notices to be submitted to the personnel manager for approval before posting. (Agreed grounds for disapproval are specified.) The General Counsel does not question the Union's authority to negotiate in these particulars; and the instant complaint does not allege any resulting limitation on any other union as an alleged unfair labor practice herein.

(7) International imposes a trusteeship on Local P-9

On March 14, 1986, International withdrew its prior official sanction of P-9's strike at Austin. Nonetheless, Local P-9's officers continued Local P-9's strike there; and, Local P-9 maintained its picket line at Austin, and its extended picket line at Freemont (and apparently elsewhere, e.g., Ottumwa).

After certain of its directives on the matter were repeatedly ignored, on May 28, 1986, International placed its Local P-9 in a trusteeship. By such action International effectively supplanted Local P-9's officers as the governing officials of Local P-9. Guyette, who had l9 years' seniority with Hormel, is at this time effectively removed as president of Local P-9. International designated Joseph Hansen, an International vice president (and Director UFCN Region 13, Northern Plains), as the Trustee of Local P-9. Hansen effectively became Local P-9's chief executive officer (in place of Guyette) at this time. (International also designated Ken Kimbro and Jack Smith as deputy trustees.)

Presently listed are Local P-9's other officials who were similarly effectively removed from active office at this time, with their respective Hormel employment seniority shown in parenthesis. They are (R. Exh. 32): Lynn C. Houston, vice president (4); Peter T. Winkels, business agent (20); Kathryn L. Buck, financial secretary (3); and four executive board members: Carl Pontius (24), Floyd E. Lenock (40), John C. Weis (43), and James Mo Retterath (19).

(a) *Local P-9's name change to Local 9*

Local P-9's name was later officially changed to Local 9. Whenever that may have been done precisely, for present purpose clarity, International's trusteed Local Union at Austin is referred to as Local 9, or the Austin Local Union, from date of trusteeship. The then effectively deposed officers and agents of former Local P-9, and the Austin Hormel employees who previously supported, and continued to support certain anticoncessionary policies and positions as espoused by former Local P-9, its former officers, agents, and members,

are similarly thereafter both appropriately, and more conveniently to be referred to as the P-9 dissident group.

It is however also warranted to note that the replaced Austin plant (former) P-9 striking employees who were placed on the phl (whether continuously supportive of the P-9 dissident group, or not), are thereinafter no less represented by Local 9, as are all the current employed unit employees at Austin including both returning Austin strikers, and permanent replacements.

(8) The arbitrator's decision

Langemeier had his arbitration hearing on April 10, 1986. In early June 1986 Langemeier had traveled with his family to Los Angeles, California, where he gave his first of several public addresses. Langemeier testified credibly that he had spoken in Los Angeles at various local union meetings, and at various civic group meetings held there, about tbe issues in the Hormel dispute. The record is clear that at this time Langemeier sought and received financial support for both Austin and Freemont employees, who were displaced (replaced) because of honoring Local P-9's earlier picket lines.

Langemeier has also testified, with considerable evidentiary support of record, that he was also active even at that time in an effort to build a broad-base labor network to facilitate a coordination (of his perception) of the need for uniform worker struggles (in general) against concessionary contracts, and unsafe working conditions. Langemeier has categorically denied that he, at any time in California, had spoken out in support of a boycott of Hormel products. There is no claim, or direct evidence presented of record that he had done so in California.

In the interim on June 2, 1986, the arbitrator issued his decision on Langemeier's grievance. The arbitrator determined that since Langemeier's conduct had been ''defiant'' to both his foreman Gunderson and to Personnel Manager Young in refusing to remove the ''P-9 Proud'' sticker, under the circumstances that prevailed in December, 1985, it had threatened Hormel's production efficiency; and, the Arbitrator thus ruled that the sanctions that Employer had imposed on Langemeier, viz., the suspension without pay, and reinstatement with two strikes (but not the discharge, as that was not before him), were reasonable.

In subsequent review of the arbitrator's decision, on August 27, 1986, the General Counsel declined to defer to the arbitrator's award sustaining Employer's imposition of sanctions on Langemeier for Langemeier's earlier wearing of a ''P-9 Proud'' sticker. Rather, in light of Langemeier's conduct (viewed) as a clear engagement in protected concerted activity, the General Counsel concluded that the arbitrator's decision sustaining sanctions on the exercise thereof, was itself discernibly repugnant to the purposes and policies of the Act, under existing Board precedent.

(9) Removal of P-9's picket line at Freemont and related developments

Following the imposition of the International trusteeship of Local P-9, International ordered the removal of P-9's unauthorized picket line at Freemont, and International and Local 9 promptly renewed negotiations with Hormel for a new (separate) agreement for Austin. On June 4, 1986, Local 9 removed the picket line at Freemont, pursuant to International's order that it do so.

(a) *Unconditional offers to return*

Niederdeppe made an immediate unconditional offer to return on behalf of all striking Freemont employees theretofore honoring Local P-9's picket line. Upon learning in California of the removal of Local P-9's picket line, Langemeier (and his family) immediately returned home; and, on June 7, 1986, Langemeier made a personal unconditional offer to return to work to Employer.

Of the 45 Freemont employees who had initially continued to honor Local P-9's picket line in January 1986; essentially been replaced; and then put on a phl, apparently some 13 (more) had subsequently crossed Local P-9's picket line in the interim between January 27 and June 4, 1986, and been employed. In any event, with still certain others quitting or retiring during that same period, as of June 4, 1986, only 25 Freemont employees, including Langemeier, remained on the Freemont phl when Local 9 removed the picket line at Freemont.

(b) *Langemeier's position on the Freemont phl*

Langemeier's name had never been lower than third on the Freemont phl. Indeed, with the removal of Bruce Campbell's name from the Freemont phl on June 24, 1986, Langemeier had then become the number one ranked person for rehire at the Freemont facility.

(c) *The formation of a new union, NAMPU*

With the placement of P-9 in trusteeship in the end of May 1986, and the absence of a strike settlement providing for the ready return of P-9 strikers, some impetus was then added from P-9 supporters in the months of June and July, 1986 towards the formation, and support of a fledgling North American Meat Packers Union (NAMPU), a new union to be chartered with a major purpose to provide an alternative in the future to a union's entry of concessionary contracts with employers. During the summer of 1986, certain individuals supporting P-9 (but not Langemeier) formed NAMPU. Langemeier testified that he was never a member of NAMPU.

(10) The newly negotiated agreements at Freemont and at Austin

During this same time, International, and its involved local unions, were actively negotiating with Employer Hormel for terms of certain new collective-bargaining agreements. E.g., beginning in July, but much more seriously in August, International, along with Niederdeppe and Freemont's bargaining committee had met and negotiated with Hormel. By late August those parties had reached a new agreement, inter alia providing for recovery of certain earlier wage concessions.

In that regard, the expiring 1979–1986 Chain Agreement covering (inter alia) Freemont, had been negotiated in 1979; interimly renegotiated with certain changes in 1982, and last negotiated on October 10, 1984, by David A. Larson, Hormel vice president, human resources on behalf of Hormel, and, accepted in behalf of the Hormel chain (Local unions) by Lewie G. Anderson, an International vice president in charge of International's packinghouse division. The

1984 chain agreement reopener modification had also been subject to a ratification by each of the involved local unions' membership.

As presently pertinent, that chain agreement was to expire (at each covered Hormel plant location) by its terms on September 1, 1986; and, it had contained (at least) since 1984 certain union wage (and benefits) concessions. The contract also contained an Employer commitment that there would be no plant closing prior to August 31, 1986, thus effectively for the life of the expiring agreement, at (at least) six named and covered locations: Algona, Iowa; Beloit, Wisconsin; Charlotte, North Carolina; Dallas, Texas; Freemont, Nebraska; and Atlanta, Georgia.

B. *The Urged Boycott Evidence*

Agreement on a new chain agreement covering (inter alia) Freemont was reached prior to the contract's expiration. Thus (I find) on either August 27, or 28, 1986, the Union (materially, Anderson and Niederdeppe, and Freemont's bargaining committee), and Employer Hormel (Larson) negotiated a proposed new (chain) agreement for Freemont (and elsewhere); and, the Union (Anderson and Hanson for Local 9) had similarly negotiated a proposed new separate contract for Austin.

To the extent certain of Langemeier testimony may indicate a denied awareness at this time that the Union had negotiated an agreement, it is too strained, and not credited. Rather, it is clear of record that Langemeier at this time openly advanced a position contrary to acceptance of the contract(s) as negotiated by International Vice President Anderson and President Niederdeppe (and Hanson), etc.

1. The September 4 leaflet

The parties are in essential agreement that in the interim, on September 4, 1986, Langemeier (and certain other Freemont employees) had distributed a leaflet at the Freemont plant gates entitled, ''Don't VOTE AWAY YOUR JOB.''

Notably, Employer appears to concede (in brief) that the handbill was initiated (prepared) by Guyette, and General Counsel appears in turn to concede in brief that Guyette and Langemeier and a Larry McClurg (then) from Hormel's Ottumwa, Iowa, plant, ''had collaborated in its presentation.''

The leaflet in evidence (G.C. Exh. 19) and the related record establishes that the substantive content of the leaflet appears presented over the typed name (without signature) of each of the above individuals, and immediately below the claim, as explicitly advanced made, ''On Behalf of the Men, Women, and Children Hurt by the Hormel Company's Greed.'' Each typed name appeared above the individual's respective employment location, thus Guyette above Austin, McClurg over Ottumwa, and Langemeier over Freemont. I credit Langemeier that the leaflet was prepared in Austin; and I further note his acknowledgement of a prior discussion of its contents with Guyette, his approval of the use of his name; and also, that his name as it appears in type, is misspelled.

Inter alia, the leaflet substantively addressed several subjects, on which Langemeier had otherwise of record evidenced a concern, e.g., the danger of members voting on incomplete contract language. It provided examples which included an assertion that it was certain negotiated ''missing language'' that had led to the Austin strike. The leaflet also addressed (claimed) worker interrelationships existing between Austin, Freemont, and Ottumwa, as well as (apparently) those at certain other facilities in Dallas, Texas, and Dubuque, Iowa, discussed further, infra.

The leaflet did not explicitly refer in that fashion to Ottumwa. (The contract covering Ottumwa apparently would not expire till the spring of 1987.) Pointedly however, the September 1986 leaflet did recite as a related circumstance there that the 507 people in Ottumwa who their Union (Local 431) had initially told that their contract allowed them to honor picket lines (e.g., P-9's picket line), but were only later to be told by their union leadership that the language (of the contract) meant something else, had now received an Ottumwa arbitrator's determination that said they were unlawfully discharged (for honoring the P-9 picket line), and that they should be put back to work by September 15. However, the leaflet made further assertion that Hormel had now threatened those Ottumwa employees with layoff, if reinstated.

The leaflet otherwise informed employees that an International official had also admitted that union representatives at a Hormel chain (negotiation) meeting had voted not to make recall of strikers an issue in the negotiations, with the result that over 800 (sic) at Austin are being left without jobs, and (sic) at Freemont.

The leaflet next stated, and in this respect it constitutes one of the five major basis advanced by Employer to support its central contention that Langemeier *is* a boycotter, or (at least) alternatively that Hormel had grounds in good faith to believe that Langemeier *is* a boycotter.

> *Only Complete Job Restoration through Fair Contract Will End the Boycott.*

The leaflet continued with related assertions, first, that despite certain Hormel (offsetting) actions, Hormel had continued ''to lose money''; and, that ''2) National and local labor unions, religious organizations, Rev. Jesse Jackson, and State Democratic Party platforms—to name a few—have pledged to support the boycott until all jobs are restored.''

The leaflet otherwise urged matters of interest to Langemeier. Thus it urged (essentially) a preservation of worker strength in ''common expiration dates, (and) the right to honor each other's picket lines . . . .'' Finally, in urging worker unity, the leaflet related, specifically,

> We all know what we want—common contract expiration dates, a safe place to work, job protection, an effective grievance and arbitration procedure, and a saving wage as well as a living wage.

As noted, Local 22's membership thereafter on September 7, 1986, ratified the 1986–1989 contract; and, only thereupon, did the contract's wages, and (new) terms and conditions of employment become effective (at Freemont), albeit then made effective by the terms of the agreement from September 1, 1986, through September 2, 1989.

Langemeier denies that on that (or any occasion) that he personally spoke in favor of a boycott. Moreover, he testified that the boycott was not the issue at Freemont. Employer essentially concedes in brief, and in any event, I now find, that

under any view to be taken of Langemeier's part in the above leaflet preparation and distribution, Langemeier was engaged in protected concerted activity in regard to his part in the preparation, and distribution of the above leaflet on September 4, 1986, as well as in certain subsequent discussion of its content with employees. Apart from the (uncontested) consideration of the leaflet's preparation and distribution being protected conduct at this time, Employer continues to argue it constitutes evidence supporting Employer's contention that Langemeier actually supported boycott of Hormel products.

According to International's published account of the results of the negotiation, and, as introduced by Employer, the chain agreement (purportedly) restored its covered plant unit employees (at least) to the wage rates paid prior to the recent period of past concessionary agreements. On September 7, 1986, Freemont Local 22 (and other Locals) ratified the chain agreement. The Austin Local also ratified its separate agreement on September 7, 1986.

International notified its members subsequently that the respective ratification votes (and percentages) were:

Local	*Location*	*Votes in Favor*	*Votes Against*
9	Austin, MN	1060 (70.7%)	440 (29.3%)
22	Freemont, NE	420 (79.1%)	111 (20.9%)
31	Algona, IA	93 (89.4%)	11 (10.6%)
73A	Beloit, WI	56 (58.3%)	40 (41.7%)
408	Houston, TX	42 (100%)	0 (00.0%)
442	Atlanta, GA	50 (79.4%)	13 (20.6%)
540	Dallas, TX	40 (100%)	0 (00.0%)
204	Charlotte, NC	12 (100%)	0 (00.0%)

In regard to the nature of the negotiations that led to the ratified contracts, Larson otherwise testified (generally) that Employer Hormel had discussed the economics at the big table (with all the unions present) and local contract language with smaller groups (to wit, the involved locals, respectively). Materially, Larson testified that Hormel had formulated a policy on the matter of its employees (and the Union) engaging in a boycott; and, Larson articulated it (I find) at the negotiation meetings (at the big table) at which the agreement on contracts were reached on August 27 or 28, 1986.

Thus Larson testified credibly and without subsequent contradiction that in the presence of representatives from all the Hormel plants that were assembled there, he had said, that if employees (subsequently) engaged in boycott activities, they would be terminated. Larson explained further to them that Hormel's policy was that for its employees to participate in boycott activities (i.e., after reaching, and ratifying an agreement with the Company) would be counterproductive to what the Company was trying to do, including providing the (unit) employees with long-term secure jobs.

Larson said the Company asked that all the employees cease and desist from boycott activities. He then told the employees (sic, representatives) that should (any) employees chose not to do so, Hormel had no choice but to terminate their employment with Hormel, because they (boycotting employees) were (then) working in opposition to what Hormel was trying to accomplish.

Larson testified that he also said he would appreciate it if the Union would support the Company; that he already had the International's approval therein; and that he would appreciate it if the local unions there would address that matter with the employees they represented at the time of the ratification of the proposed agreements, and also point out to the employees how it (a boycott) was counterproductive.

According to Hormel's chief negotiator Larson, it was because of the (boycott) activity in Austin that they had put strong (boycott) language into the Austin contract, but Larson otherwise testified that they had also discussed it (Employer's policy on boycott activity) in the above manner in connection with all contracts.

The Austin contract (R. Exh. 26, p. 5) specifically provides:

> Article III—Recognition and Union Security
>
> . . . .
>
> (c) The Union in its own behalf and on behalf of its membership agrees that during the life of this Agreement there shall be no concerted strikes, slow downs, refusals to work, sympathy strikes, picketing or boycotts by the Union, its agents or its membership, nor shall the Union, its agents or its membership threaten, coerce or restrain the Company, any business affiliated with the Company or any other person or business where an object thereof is to force or require any person or business to cease using, selling, handling, transporting or otherwise dealing in the products of the Company, or to cease doing business with the Company.
>
> (d) The Union shall take all steps and do all that is possible to terminate any activity described above occurring during the life of this Agreement by any bargaining unit member, the Union agents, or representatives. Any bargaining unit member who engages in any of the conduct described above shall be subject to immediate discipline, up to and including discharge. In the event an employee is disciplined or discharged and the Union wishes to contest such action, it must do so under the grievance/arbitration provisions of this Agreement. The decision of an arbitrator shall be limited solely to whether tbe individual participated in the prohibited activity.
>
> The employer agrees that during the life of this agreement there shall be no lock out of the employees.

In contrast, The Freemont (chain) contract (G.C. Exh. 5, p. 4) provides:

> Section 14. Recognition—1 Sept. 1986
>
> The Union in its own behalf and on behalf of the employees agrees that during the life of this agreement, there shall be no strikes, slow downs, refusals to or interferences with work, sympathy strikes or refusals to work, or picketing by the Union or the employees, no (sic) officer or representative of the Union shall authorize, and or condone any such activity, and no employee shall participate in any such activity. The Employer agrees that during the life of this Agreement there shall be no lockout of the employees.

Larson otherwise testified in regard to the (broad) implementation of the Company's policy against its employees

(subsequently) engaging in boycott activity, that the local management of the plant/organization in which an employee was involved subsequently made the determination of whether a given employee had engaged in boycott activity (e.g., after contract agreement, and strike settlement agreement were in place.); and, that he (Larson) personally did not interject himself into that determination. Larson however testified that in regard to Employer Hormel having a policy for a standard implementation, ''he did discuss with Ralph Nelson (Young's boss), that if people were involved in the boycott, after they've been told they shouldn't, then if they (the local plant/organization managers) could bring them (employees) in to talk to them, and prove that they had been involved in boycotting, then they should be terminated.''

2. The trip to Great Britain

In late September 1986, Guyette invited Langemeier to accompany a group of workers to Great Britain to attend the British Labour Party's political conference, and to meet with striking mine workers in that country. The trip was to take place in late September, early October, and to last for 2 weeks. After some family discussion and reflection, Langemeier agreed to go. Young testified (thus acknowledges) that some time in (late) September 1986, Niederdeppe advised Young that Langemeier was going on this trip. (Niederdeppe testified that he first learned of it from Langemeier, but after the fact.) Langemeier left on the trip in the end of September 1986 and returned about October 9, 1986.

a. *Local 9 urges an end to the boycott; signs a contract*

In the interim, in publishing the results of the Austin ratification (1060 Yes, 440 No), by leaflet dated October 1, 1986, Trustee Hansen, in addition to advising centrally that ''A boycott of Hormel products . . . does nothing but hurt the chances of those who have not yet returned to work'' then advised all Austin unit employees, making the Union's legal, and practical case to all member of P-9 dissident group as well as (active) members of Local 9, more pointedly in regard to a boycott, as follows:

> The new collective bargaining agreement entered into with Hormel which was ratified overwhelmingly by the membership of Local P-9 prohibits, among other things, boycott of Hormel products. It further requires that the union take steps to terminate such activities during the term of the agreement by any bargaining unit member. As trustee of Local P-9, I hereby request that any boycott being engaged in by bargaining unit members cease immediately. Continuation of boycott activity could lead to disciplinary action up to and including discharge for those bargaining unit members who participate in such conduct.
>
> This request to cease such activity is not just a legal requirement of a collective bargaining agreement but is also a practical request. Such activity can do nothing but hurt the members currently employed by the company and those whom we seek to return to work at the company from the preferential hiring list. Our objective must be to expand the number of positions in the Hormel plant in Austin so that all persons can return to work. A boycott of Hormel products is completely inconsistent with this objective and does nothing but hurt the chances of those who have not yet returned to work. I therefore, request that if any of you are engaging in boycott activity, it cease immediately.

The parties stipulated relatedly, ''[t]hat at no time during August 1, 1985 to the present time did the [International] grant boycott sanction against Hormel Products.''

On October 3, 1986, Hormel and Local 9 executed the 1986–1990 separate collective-bargaining contract for Austin. That contract is effective by its terms from September 1, 1986, through September 1, 1990. Negotiations continued for a strike settlement agreement to govern the return of replaced striking employees.

b. *Employer enters an informal settlement*

On October 6, 1986, after Langemeier had left on a trip to Great Britain with certain others in a group, Respondent Employer entered into an informal Board settlement agreement in settlement of Langemeier's individual charges in Cases 17–CA–12789 and 17–CA–12828 (as amended) on allegations centrally raised therein that Employer had unlawfully denied employees (Langemeier) union notice access to the employees' bulletin board, and had unlawfully disparately, and discriminatorily, discharged, suspended, and/or otherwise disciplined Langemeier for engaging in union, and protected activity in wearing a ''P-9 Proud'' sticker in the plant in December, 1985.

The informal settlement agreement contained a nonadmission clause. It also provided for a posting of a notice to employees, with which terms, Employer agreed to comply. The notice terms provided that Employer would, inter alia:

> . . . upon an unconditional application to return to work (already accomplished in June, 1986), offer Robert Langemeier immediate and full reinstatement to his former job or to a substantially equivalent position if his former job no longer exists or, if he has been permanently replaced, place him on preferential hiring list and offer him reinstatement based on the reinstatement procedure (by seniority currently in effect).

Langemeier already, indeed since June 24, occupied the number one position on a phl for recall at Freemont. However, he is not reinstated to employment at the time, but remained number 1 on the Freemont phl.

The (notice) terms of the informal settlement agreement otherwise provided: that Employer Hormel would not suspend, discharge, or otherwise discipline employees for engaging in activities protected by Section 7 of the Act; that Employer Hormel would make Langemeier ''whole for any loss of earnings he suffered from December 11, 1985 to February 13, 1986 as a result of [Employer's] suspending [sic] him [without pay]''; and, that the Employer would ''provide employees access to bulletin boards for the purpose of posting union-related material as [Employer] did prior to August 26, 1985''; and, that Respondent Employer would not, ''interfere with, restrain or coerce [its] employees with respect to their rights.'' Langemeier's signature does not appear in the above settlement agreement in evidence (G.C. Exh. 2). If approved unilaterally, it was also approved with-

out any apparent subsequent appeal, or objection by Langemeier.

c. *The trip to Great Britain*

Traveling in a group to Great Britain, in addition to the deposed P-president and union dissident Guyette, and replaced (former) Freemont striker and the (alleged) unlawfully discharged, suspended, or otherwise disciplined Langemeier, were: Collette of AUSG, and Cook. (Cook is only one of the over 500 employees already determined by an arbitrator to have been discharged without just cause by Hormel for honoring P-9's picket line at Ottumwa, Iowa, reinstated, and since laid off.) Also traveling with this group, inter alia, were: Gale Shangold, of the Steelworkers, and Kathy Michaels and Kipp Dawson from the United Mine Workers of America. (It is unclear whether the latter three individuals held any union office in their respective unions, in addition to their apparent membership in the named unions, respectively. Dawson would later submit an account of the trip to The New York Militant newspaper, infra.)

In addressing the composition of this traveling group in its brief, Employer not only confirms Collette's inclusion as representing AUSG, Employer further identified Collette as representing a (claimed related) Hormel Rank and File Fight Back group (HRFFB). Employer asserts (generally) that persons associated with the Socialists Workers Party had also accompanied the group. Be that as it may, and materially, if Langemeier's participation in the trip to Great Britain with others, is, as claimed by him, to seek and promote labor solidarity (with the coal miners), albeit including (nonboycott) support of the P-9 dissident group, the same is clearly union and protected concerted activity.

Nonetheless, participation in the Great Britain trip is the second of five incidents that Employer would seek to rely upon to establish its contention that Langemeier is a boycotter; and it does so essentially because others in the group promoted a boycott there. In that regard, Employer contends evidence of record establishes that extending a boycott to Great Britain was one of the asserted purposes of the trip. To establish (at least) Young's good-faith belief of same, Employer has introduced certain newspaper accounts that were (subsequently) brought to Young's attention.

Credited testimonial evidence of record established that on arrival in Great Britain the group, including Langemeier, spent the 1 week at the Annual British Labour Party National Conference held in Blackpool, England, where members of the group attended fringe meetings of that Party. In that regard, it is evidenced convincingly of record that during the first week only Guyette and Collette spoke publicly to Labour Party (support) groups. In the second week, however, Langemeier (and Cook) went to outlying villages. (Guyette did not accompany them.) There Langemeier spoke at (essentially) local union meetings, on such subjects as the issues of the P-9 strike against Hormel; and the effects of concessionary bargaining on the labor movement in the United States. In turn, Langemeier (again) received financial, and other support, for the replaced Hormel employees.

As noted, and materially so, certain newspaper accounts of the trip were later brought to the attention of Young, infra. Presently considered is such an article, under the byline of one of the group, Kipp Dawson, which appeared in the New York Militant on October 17, 1986. The Dawson article relates pertinently that, inter alia, Langemeier had made a presentation to a mine workers' meeting. The article otherwise referred to Cook and Langemeier as ''fired'' for honoring picket lines, though it then also related that an arbitrator had ordered Cook's reinstatement, but the Company had then declared Cook laid off.

Another article (brought to Young's attention) appearing in the New York Militant for October 24, 1986 (under different author byline), states (only) that Cook and Langemeier ''were among the workers victimized by Hormel in early 1986 for honoring (P-9) picket lines set up outside the plants where they worked.'' Neither of the above article accounts ascribed any boycott call, or boycott support statement made in Great Britain to members of the traveling group, let alone purports to ascribe it to either Langemeier or Cook.

Employer contends however that a major item on the agenda of the group was (later) revealed in fact to be to urge a boycott of Spam in the United Kingdom. In that regard, Employer (in brief) argues that when the group returned to the U.S. in late October-early November 1986, that Guyette and Collette, in a public interview had declared that a major goal of the trip had been achieved; and, that ''The boycott of Spam had taken hold in the U.K.'' (It is warranted to note, Freemont is Employer's principal canner of Spam.)

Of more material note, in a (local) newspaper account in the Austin Daily Herald of October 16, 1986 (that also came to Young's attention), Guyette and Collette are there related following their recent (about a week earlier) return, to have released in a local (Austin) press conference, an announcement that a call for a boycott of Hormel products had been extended by them to Great Britain, and (as thus ascribed to them) related the further announcement that their urged boycott had received the endorsement of certain members of the British Labour Party. Neither account assigns or ascribes a similar boycott purpose statement directly to Langemeier (or Cook). Langemeier acknowledged that Guyette and Collette both spoke in favor of a boycott.

It is also notable that, even as of this time, Local 9 and Employer had still not come to a full accord governing their relationship at Austin, in that they had not as yet fully agreed upon a strike settlement. Local 9 and Employer did not agree to that until November 3, 1986, thus well after the group's return from Great Britain, and the above-reported announcement of Guyette and Collette.

Employer (alternatively) contends that (at least) with the strike settlement agreement also now in place, the prior Austin collective-bargaining agreement, and the Austin strike settlement then constituted a complete agreement between the Austin Local and Employer governing Austin employees. Employer contends that there was then no longer any labor dispute existing between Employer and Austin, nor between it and Local 22, or International.

Employer centrally contends that from that point on, boycott activity by any Hormel employee, from whatever plant, whether actively employed or an unrecalled former striker on a phl, is not protected activity under the Act. The General Counsel would distinguish the Austin and Freemont contracts on their negotiated terms, or lack thereof, governing lawful boycott discipline.

Langemeier denied that he was over in Great Britain to boycott any Hormel Products; though he acknowledged that he knew Collette would probably push the boycott there; and

that on the way over, in New York, Collette had said one of our objectives was to carry the cram your spam message there. However Langemeier testified that wasn't his issue; and, he didn't pursue it. Relatedly, I conclude and find on the weight of evidence offered in regard to the Great Britain trip, that there is no written or testimonial explicit boycott support statement to be attributed to Langemeier (or Cook).

In contrast, at some point thereafter all (8) of the deposed original officers of Local P-9 later put out a leaflet (R. Exh. 32) over their respective individual signatures as such, reciting their reasons for a continued support and extension of a boycott of Hormel, and related products. The leaflet is undated on its face. The authenticity of the signatures, and the fact of the leaflet's distribution was uncontested. While Employer offered credible testimony that all leaflets when distributed were later collected in a file, Employer acknowledged at time of offer of the exhibit that it did not have available evidence as to the precise date of this particular leaflet's distribution.

It appears of record relatedly that it was in February 1987 that Hormel fired all the former P-9 officers including Guyette, Huston, Buck, and Winkler, and a couple dozen or so more, including employee/member Cain, for active participation in the boycott.

Over General Counsel objection the document was received. The General Counsel objection was made on the basis that the leaflet was not dated, nor was its date of distribution sufficiently evidenced by Employer, and thus it was urged there was a fatal failure in any relevancy showing for the document. The General Counsel explicitly did not object to authenticity, or otherwise contest distribution.

The leaflet was admitted because the substantive content of the otherwise unquestioned authentic and distributed document was itself deemed sufficient to identify its time of issuance as (at least) postdating certain events clearly material herein. In passing I observe it is uncontested that the Local 9 and Hormel strike settlement agreement was entered on November 6, 1986, and that Freemont phl and Ottumwa employees obtained employment in Freemont (later) in July 1987, infra. In those respects the leaflet in its paragraphs 1–2, in pertinent part provides:

> We along with approximately 1400, other union members in various Hormel plants have been victims of the first ever union sponsored lock-out as a result of the supposed recently settled agreements between the UFCW Trustees and the Geo. A. Hormel & Co. officials.
>
> To date not one person has been recalled as a result of the UFCW Hormel agreement and to quote the UFCW Trustee the UFCW never asked for any-ones job back.' Because of a side agreement limiting recall for the locked out 1400 employees and their families, the only thing that will force Hormel to call people back to work is increased pressure on Hormel and their subsidiaries.

After recitement in the leaflet, that they would continue to speak out against perceived Hormel improper conduct; and, after (essentially) requesting continued financial aid, the leaflet went on materially to state in regard to the subject of boycott:

> We also are extending the Hormel boycott to their other subsidiary operations like Jenny-O and Dubuque Food Products, because we already know that the Hormel boycott has affected the Company profits, and by extending the boycott to their other profitable lines we can let this corporation know that Patco's death knell will not be joined . . . .

In light of the above material references: to the settled agreements reached between Hormel and (Local 9) trustees; to the asserted lockout (sic) of 1400 (Austin, Freemont, and Ottumwa) employees; and the related record proof of first reemployments in July 1987, the same is, in my view, under all the above and other evidenced circumstances, sufficient to establish (unquestioned) distribution of this leaflet, occurred in a material time.

Indeed, in the light of all the evidence of record, I am wholly persuaded the distribution of this leaflet was not only after the parties' entry of the signed contact for Austin on October 3, 1986 but also after the entry of the above-referenced strike settlement, which was signed on November 6, 1986, which did not provide for P-9 strikers immediate recall, and, which probably (at least) in part, prompted issuance of the leaflet at about this time.

Thus, the November 6 strike settlement set forth the parties' overall agreements to the extent reached in resolving a number of other related (civil and Board) actions then current between the parties. However, it also explicitly set forth the parties' overall agreement(s) that then actively employed unit employees, most of whom became members of the Union (and who were all represented by the Local 9), including both those unit employees theretofore hired as permanent replacements for the employees engaging in the economic strike, and those unit P-9 member-employees who had earlier returned, crossing Local P-9's picket line (for whatever reason), and who had then been timely employed, would *not* be (essentially) released to make way for other former striking employees who had heretofore, but only subsequently to replacement or other striker return, made unconditional application for reinstatement, though (individually) they might possess a greater overall seniority than those earlier and presently actively employed.

The strike settlement agreement also regulated, in detail, the considerations that would govern in future layoff conditions, with (essentially) the length of any such layoff determinative of the application to be made of overall Hormel seniority. (The agreement as signed on November 6, 1986, initially provided for expiration of striker preferential hiring rights on September 1, 1988. The parties have since renegotiated it to be of unlimited duration.)

Although he did not receive copy until later (in March), Young was aware (from interplant communications) of newspaper account(s) from the Militant of December 12, 1986 (G.C. Exh. 28, p. 4) which are pertinent in regard to their indication to Young of reported (continued) boycott calls and/or boycott support statements being attributed to Guyette (and Cecil Cain) in December, 1986. Cain, a replaced P-9 striker, and an Austin member (but not a former or deposed P-9 officer), was at that time traveling the country, speaking to union groups. At least in material part they are both reported in the newspaper accounts as (essentially) calling for

a continued boycott of Hormel to bring about the recall/return of the Austin (replaced) strikers.

One such (purported) quoted account of Cain's visit to the New York-New Jersey area, inter alia, quotes Cain as saying: (a) ''We ask them absolutely to help us, to boycott the product'': and, in regard to the Employer's argument that P-9 continued boycott activity constituted a minority group attack vis-a-vis an existing contract, and thus is unprotected, member Cain, but not Guyette is then quoted as saying, (b) the new contract in Austin, ''has got to be removed or they can indiscriminatorily get rid of anybody they don't like.'' While no direct (boycott) quote may appear attributable to Guyette in this newspaper account of his trip to Boston, that account does report generally that on this occasion Guyette had encouraged the local unions in attendance to step up the boycott of Hormel products and to pass resolutions demanding that Hormel rehire the 1200 (sic) excluded workers.

The Respondent has introduced several other leaflets (R. Exhs. 28–31) clearly calling for Hormel and related product boycott, and with specific references to boycott of subsidiary Hormel companies. Some leaflets on their face clearly indicate a 1987 issuance. None appear identified as attributable directly to the deposed Local P-9 officers, or to specific, or group P-9 dissident employees (let alone appear attributable to Langemeier), but at best rather appear on their face to be attributable to variously named organizations supporting the P-9 dissident group, e.g., by virtue of leaflet face requests that financial support be given to the certain named organizations supporting P-9, to wit, HR & FFB Fund; Hormel Fight Back; and Hormel Fight Back/AUSG.

Hormel Vice President Larson has testified relatedly as to the reasons (essentially, commonality of place and purpose) that he has concluded that all of the above organizations or groups are really the same as, or are acting as a front for the P-9 dissident group; and Employer in brief has urged such a finding be made.

Even were I to find that AUSG, and any related group(s), by use of common location and expression of common purpose and support, were an agent of first Local P-9, and now the P-9 dissident group, which finding(s) I need not, and expressly do not make, that finding would not establish that Langemeier (a member of none of these groups) had either thereby joined in, or advanced any boycott effort undertaken on their part. As I need not, and do not reach or resolve any issue of an agency relationship of AUSG, etc., to past members of P-9, or present members of P-9 dissident group, I need not address any other urged consideration of independent exercise of important first amendment rights by individuals, not employed by Hormel, in support of and/or on behalf of others who, if they engaged personally in similar boycott activities would do so in a manner in conflict with the statute.

What is materially clear of record beyond the questioning in this case is that the deposed P-9 officers, each and all, have so openly declared themselves to be in support of, and in favor of an extension of the boycott, as to have clearly shown themselves to Employer to be (subsequently) engaged in boycott activity. Each and all (along with Cain, and some 2 dozen or so similar acting phl employees), infra, were fired for it, under specific terms of a (lawfully negotiated) contract that clearly allowed discharge for such continued boycott activity.

It bears repeating then that the central issue in this case is, was Langemeier, who unquestionably embraced and was a committed supporter of P-9's basic stand on nonentry into a union concessionary contract, also an unprotected boycotter, at any time; and, if so, was he lawfully discharged for that reason, or rather for some other protected reason. For if Langemeier's actions with and/or in support of the P-9 group, e.g., are to be explained and/or accounted for by the evidence as but evidencing his own continuing efforts in an ongoing struggle with them to build support against unions entering concessionary agreements, i.e., with others of the same mind, Langemeier is therein engaged centrally (in my view) in classic statutory union, and/or other protected concerted activity. A still wholly separate issue then is, if Langemeier be shown to the contrary to be a boycotter, or to have acted in such manner as to have caused Employer to reasonable believe that he was a boycotter, whether Employer's discharge of Langemeier for same was even then permitted by the Freemont contract, and/or the statute.

From the start the parties have (essentially) acknowledged that Langemeier is the last and closest case of a (perceived) boycotter to be disciplined by Employer, with Employer candidly stating its willingness to stipulate that nowhere does it appear in *documentary* form that Langemeier had ever *said* that he supported a boycott. (Important considerations of the proper scope of protected Union and concerted activity with others are thus also presented.) In that regard, I presently conclude and find that apart from Langemeier's role in preparation, distribution or discussion of the leaflet of September 4, 1986, discussed infra, no documentary (and testimonial) evidence proffered by Employer on Langemeier's trip to Great Britain in a group that included some others who did support a boycott, would warrant a conclusion to the contrary.

The complaint alleges unlawful Employer motivations beyond those related to a boycott. Employer centrally contends however this is not a double motive or pretext case, it is a discharge centrally over the (asserted) fact that Langemeier is an unprotected boycotter, or Employer's reasoned belief that Langemeier is such a boycotter. In support of its position, Employer introduced evidence that on December, 4, 1986, Langemeier had filed a charge in Case 17–CA–13212, raising those other issues, to wit, alleging that, in violation of Section 8(a)(1), (3), and (4) of the Act, despite the circumstances of numerous interim employee departures from Freemont, Respondent Employer Hormel had failed to recall any Freemont strikers, and Langemeier in particular, because Langemeier was the most senior person on the Freemont preferential hiring list, andl Employer was hostile to Langemeier's return because of his union and/or other protected concerted activities.

On January 23, 1987, the Regional Director (RD) refused to issue complaint in any of the above particulars alleged. The RD's dismissal letter relates, that upon investigation, apart from the Employer employing an individual for a certain welding job, as to which all employees on the preferential hiring list were first given opportunity to test, but did not avail themselves, the evidence indicated the Employer had hired no employees.

The RD concluded therefrom:

> Under those circumstances, there is insufficient evidence to establish that the Employer has failed to recall any or all of the employees on the preferential hiring list because of any protected, concerted activity in which they may have engaged, or because they filed charges and provided testimony to the Board.

The RD accordingly refused to issue a complaint. On February 2, 1987, Langemeier appealed. The General Counsel subsequently denied Langemeier's appeal on February 19, 1987, with additional observation that no new employee (otherwise) had been hired since May 20, 1986. Evidence of record presented herein (essentially) by all the parties, and bearing thereon, including, inter alia, Young's credited testimony of the business reasons for Freemont's employee buildup, and its long lasting effect, and, Niederdeppe's essential corroboration that under the Freemont contract, Employer did not have a layoff option, strongly support those findings.

In passing I do observe that the dismissal letter of January 23, 1987 (in evidence), had related:

> The investigation further disclosed that in or about October or November, 1986, a supervisor allegedly told one of the Employer's Freemont employees that the employees on the preferential hiring list were going to have trouble being recalled as long as Robert Langemeier was at the top of the list in seniority because he (the supervisor) had heard a rumor that the Employer did not want Langemeier reinstated because he was a troublemaker. Assuming *arguendo* that this remark was made and that it would otherwise constitute a violation of Section 8(a)(1) of the Act, in light of the isolated nature of the remark and the fact that on January 16, 1987, the Employer provided verbal assurances that Langemeier and the other employees on the preferential hiring list would be recalled in order of seniority as positions become available, it would not effectuate the policies of the Act to issue a complaint in this regard.

Langemeier testified that he had heard of that rumor, though from a nonsupervisor. Young however confirmed that Niederdeppe came into his office with a similar report, but that a named supervisor had made the statement. Niederdeppe's stated concern, if it were so, was to get the Fremont phl employees immediately hired. Young testified that on the basis of the above-stated business factors, he convinced Niederdeppe that the rumor was not true. Moreover Young testified credibly that he had personally called the named supervisor in to investigate the matter, and the supervisor (now retired) denied making the statement.

The instant complaint does *not* allege the October-November statement by a supervisor referred to in the RD's dismissal letter of January 23, 1987, as an unfair labor practice. As it is clearly within the authority of the General Counsel to determine the extent of the matter(s) that shall be the subject of complaint allegation, that allegation is deemed not one to have been placed before me, or the Board; and, if alternatively to be viewed as an issue fully litiqated by the parties, it is an allegation (I find) not supported.

Moreover, it is now General Counsel's contention that it is *only* by virtue of certain subsequent 1987 Employer conduct leading to an unlawful discharge of Langemeier in May–June in violation of Section 8(a)(1), (3), and (4), that the Respondent Employer has breached the terms of the earlier informal settlement agreement entered in October 1986. On that (1987) basis *alone*, the General Counsel urges the Board to affirm the RD's vacation of the prior approved informal settlement agreement executed by Employer; and, that the Board, on the marshalled evidence thereon presented herein, further find that the Respondent Employer has committed the 1985 underlying unfair labor practices as now are also alleged herein.

Employer counters that it has fully complied with all the terms of the above informal settlement agreement, as the RD has heretofore declared on May 6, 1987; and, that it has engaged in no ubsequent unlawful conduct in breach of the above settlement agreement, or in any conduct such as to otherwise warrant the Board's now setting aside that settlement agreement and proceeding further on the prior matters covered thereunder.

The Employer conduct that *is* postinformal Board settlement agreement and alleged as unlawful in the instant complaint thus is specifically, that in violation of Section 8(a)(1) of the Act Respondent Employer has interfered with, restrained and coerced its employees in that, (a) by letter dated February 26, 1987, Respondent Employer ordered its employee (Langemeier) to cease engaging in union activities and other protected, concerted activities; and then threatened Langemeier with discharge if he engaged in such activities; (b) by letters dated March 25 and 30, April 2, 9, 15, and 30, and May 19, 1987, Respondent Employer unlawfully instructed Langeeier to attend a hearing concerning such union and protected activities; (c) that on May 26, 1987, Respondent Employer unlawfully subjected Langemeier to a hearing in which it unlawfully interrogated Langemeier on such, and then told Langemeier that it had engaged in surveillance of Langemeier's above protected activities; and finally (d) that on June 15, 1987, in violation of Section 8(a)(1)(3) and (4), Respondent discharged Langemeier.

Employer defends (essentially) that its above course of conduct did not occur because of Langemeier's union, or protected concerted activity, but because he was (by this time) a discerned boycotter; who exasperatingly then sought to avoid discipline under the contract for such; and was fired on both such accounts.

3. The disputed Langemeier speech at the Pathfinder

On February 14, 1987, as an invited speaker, Langemeier spoke at the opening of the Socialist Worker Party (SWP)'s Pathfinders Books' store (The Pathfinder) located in Des Moines, Iowa. The program addressed that day was previously publicized by flyers (R. Exh. 6) as a presentment of The Militant Labor Forum, an organization sponsored by the SWP. The topic as publicized for discussion on February 14, 1987, was billed to be, ''The Crisis in meatpacking—Which Way Forward for Workers?'' A topic descriptive lead-in, as billed, provided in part, ''Years of concession contracts, high injury rates, speed up and drastic cuts in wages and benefits have forced workers to strike at Hormel, Swift, IBP, Cudahy and other meatpacking plants.''

The panel of speakers, in the order named in the flyer announcing the program, were: (1) Larry McClurg, a laid-off Hormel Ottumwa-employee and Local 431 member. (It will be recalled that McClurg's typed name appeared along with

that of Guyette and Langemeier on the leaflet distributed earlier on September 4, 1986, that (essentially) urged that the recently negotiated (Austin and Freemont) contracts not be ratified, and which contained boycott reference(s) that Employer would attribute as of some point of significance to Langemeier.) (2) Rita Lewis, a recording secretary of another (unrelated) union, employed by a Swift plant in Marshalltown, Iowa. (3) Langemeier (with name again misspelled), from Freemont. (4) Mac Warren, the Iowa District organizer of the SWP; and a billed (but unidentified) original P-9 member.

(Actually two (or more) members of P-9 were subsequently present on February 14, and spoke, viz, (deposed) Local P-9 Vice President Lynn Houston, and (deposed) Local P-9 financial secretary, Kathryn Buck. Indeed the General Counsel acknowledges that on this occasion, *both Houston and Buck spoke in support of a continued Hormel boycott.*

Respondent contended vigorously at hearing (albeit in brief, then with considerably less stated claim of a Young reliance thereon), that Langemeier spoke directly in favor of a boycott at the Pathfinders bookstore opening. In support, Respondent Employer presented at hearing related testimony of one Charles Clemens, an individual with extensive military, police, and industrial investigative experience. Clemens was employed in material terms by Per Mac Security and Investigative Services (Per Mac), then under contract with Hormel to provide certain investigative services.

Thus Clemens testified relatedly that upon a contact of Per Mac by Jim Doyle, Hormel manager of Workers Compensation Department at Austin, Clemens had earlier (initially) conducted workmen compensation investigations of certain Ottumwa employees. Clemens' direct contact there was Mike McLean, Ottumwa personnel manager, Ralph Nelson was the Ottumwa plant manager at the time.

Clemens recalled that it was on February 13 (Friday), 1987 that McLean handed Clemens a flyer (R. Exh. 6, supra) that spoke of the meeting to be held the next day at 6 p.m. at the Pathfinder in Des Moines, Iowa. According to Clemens, McLean told Clemens that an individual from Ottumwa, McClurg, and an individual from Freemont, Langemeier, were going to speak there. Clemens had access to and (at least) observed a picture of McClurg that was on file at Ottumwa, and whom he has acknowledged that he *knew*. He also received a (video tape) picture of Langemeier to take with him.

According to Clemens (at least initially), McLean told Clemens that there were (Employer) concerns about a boycott of Hormel products; and, reports that Langemeier, who was not working, had boycott stickers on his personal vehicles. However, subsequently, at least at one point, Clemens then asserted that a Company concern with boycotts was *not* relayed to him in his instructions.

Clemens testified otherwise that McLean told Clemens that he wanted Clemens to go there; to attend the meeting, if possible; to ascertain who attended; and, if possible (at least initially) ascertain what was said.

On arrival in Des Moines, Iowa, on February 14, 1987, and more pointedly in the area of The Pathfinders Bookstore at about 4 p.m., Clemens first conducted a preliminary investigation of the general area surrounding the bookstore, including exploring an alley located immediately behind the bookstore. Clemens then set up a loose surveillance of the approach to the storefront. From that vantage point, Clemens observed those arriving, and already there. Clemens did so until close to program start, personally seeing Langemeier and Buck in the storefront, but not McClurg. (Clemens also acknowledged that he filled one side of a tape, recording license plates of those he believed attended this meeting.)

Clemens next joined those in the storefront, intending to personally attend the program. However, Clemens at this point observed what appeared to him as a security table, placed in front of the doorway that led to the room where the program was to be presented. Clemens observed an appearance that a union or other identification card was being checked prior to an individual's admission. Clemens concluded that he would not be able to pass such a security check; and, as he did not want to draw attention to himself and run the risk of recognition (from any of his prior Hormel related work), he left the storefront.

Clemens next proceeded (circuitously) to the alley behind the Pathfinder store where he secreted himself in a position where he testified he could hear audible voices through gaps in a window enclosure located at the rear of the store. According to Clemens, two to three speakers into the program (whose talks he did not tape) he heard an introduction of Langemeier, and he then taped an audible voice of a speaker which he has identified as Langemeier, infra. From that vantage point, however, Clemens acknowledged that he was not able to see any speaker as the speaker spoke.

Clemens also acknowledged that McLean did not explicitly tell him to tape Langemeier, but only (generally) to find out what was said, if possible. Clemens explains his (asserted) waiting for and taping of Langemeier (alone) on the basis of his understanding that the Ottumwa officials were primarily concerned with what (Freemont's) Langemeier had to say, because, in talking to McLean, the primary focus provided to him was on Langemeier through the picture of Langemeier provided him. This time however Clemens did so with seeming more recalled prominence of Employer concern given to the background that Langemeier possibly had boycott stickers on his vehicles in regard to his instruction to determine what was said, if possible.

On cross-examination Clemens stated his recollection was that he was just to find out if (Ottumwa) employee McClurg was there, if possible; but he didn't recall an instruction to listen to McClurg. In regard to Clemens' asserted recollections generally, Clemens had retained no (personal) copy of the recording he made at the Pathfinder; and, Clemens testified that he had last heard the tape when he played it back to Ottumwa officials on February 16, 1987, under circumstances related infra.

It is thus Clemens' unrefreshed recollection of events occurring some 2 years earlier that some two to three speakers into the program, as he (thus) waited for Langemeier to speak, someone had introduced Langemeier, though Clemens promptly volunteered in his testimony that he did not recall the exact words of Langemeier's introduction. Clemens then related that be *assumed* it was Langemeier who subsequently spoke; though, in that regard, he has also acknowledged that he had never heard Langemeier speak before, and could not see him, as he (purportedly) spoke.

Clemens otherwise testified, that for the most point (sic, in context part) that the voice he heard speaking thereafter, and that he taped, was audible; and, that Langemeier (as the

thus identified speaker) spoke for about 30–45 minutes. Clemens relates that he did not tape any other speaker, though there were other voices on the tape he made.

It is Clemens' specific recollection that speaker Langemeier had spoken (generally) of worker solidarity; stated that the people must stick together; that P-9 workers had lost their jobs; and, that they should continue in an effort to get those jobs back. It was however, only then in response to a further subject (leading) question directly put to Clemens about a reference to ''tactics that should be used to help get those people their jobs back,'' that Clemens had then replied, ''Mr. Langemeier did state that the boycott of Hormel should continue.'' Clemens later affirmed that the speaker had said (both) that the struggle must continue; and that the boycott must continue.

In general, Clemens acknowledged that his recollections of what was said were disjointed; and he could not recall the order of what was said. In subsequent inquiry as to whether this speaker had said anything else, Clemens had then recalled: that he (the speaker) talked about himself attempting to go back to work for Hormel; but, then also spoke about other people who were going to be entering plants, without identifying the plant he would be working at, or that they would be entering. However, according to other recollections of Clemens, the speaker appeared to be speaking about people who were going to be transferred from the Ottumwa plants (sic).

Clemens initially recalled that the speaker also said, if he went back to the plant, he would attempt to slow production. Although Clemens recalled (generally) there was comment made about production requirements (e.g., in regard to the leafleted subject of ''high injury rates, speed up . . . .'') Clemens did not recall more specific comment, nor could he attribute the comment he did recall to anyone.

Clemens further testified that on the following Monday morning, February 16, 1987, Clemens orally reported to Plant Manager Nelson and Personnel Manager McClean. After playing the tape in their presence, he turned it over to them. He (only) additionally recalled that one of the managers then said that they would notify Jorgenson, plant manager at Freemont.

In contrast, Langemeier had earlier testified that he had spoken at this meeting for only about 5 minutes. Langemeier recounts that he spoke of the history of his local, its merger, its (initially) large size, and (then) of the history of the union giving concessions in the area and the results: to American Stores, and of its present nonexistence; to an Armour plant (formerly) represented by his Local, which, after being given concessions was later taken over by another employer (IBP), and which is no longer Union; and of Schuler [sic] workers that gave their employer concessions in a lockout circumstance, only to then later have the plant sold by that employer.

Langemeier also spoke (his view) of named conglomerates, and their use of their profits in buying up plants in the industry vis-a-vis their unwillingness to pay their workers; and (I find) he also expressed his own view of the importance of chain agreements such as existed at Hormel. In that regard, Langemeier likened the ''Chain Agreement'' to the (master) agreement which the old meatpackers (union) had in the past with Armour, Swift, and Wilson.

Langemeier also spoke of (asserted) present unsafe conditions in meatpacking plants; and, he acknowledged he spoke of a need to slow down the speed of the assembly line to a safe pace. However, Langemeier has again categorically denied that at this Pathfinder meeting (or at any other time that he ever spoke to a group) that he had ever urged or encouraged people, or their constituencies, to support the boycott of Hormel. Moreover, Langemeier had also earlier denied that he spoke of how he would continue the struggle once he got back on the job.

Langemeier, also frankly testified (essentially) that despite Employer and International (Local 9) statement that the strike was over, the 800 replaced workers at Austin didn't agree with that; and, Langemeier candidly testified that he knew what their (at least the P-9 dissident group's, and supporters') position was, viz, they were hoping that the boycott of Hormel products might be one avenue of economic pressure that they can put on the Company. However, Langemeier repeatedly denied that he had supported a boycott (essentially) because he personally did not believe that boycotting had a history of being effective.

Mrs. Langemeier corroborated her husband. She testified that Langemeier spoke of the wage cuts at different companies; and, that workers need to stick together to build unity and solidarity. Mrs. Langemeier also confirmed that her husband did not support the boycott; and did not speak to the boycott in this meeting. Indeed, Mrs. Langemeier added pragmatic observation, that there was no need for him to do so, as there were two Austin workers there to speak of the boycott.

Called by General Counsel in rebuttal, Peter L. Bucy, in attendance at the meeting, corroborated that Langemeier had talked about his own discharge for wearing a P-9 sticker; spoke of his concern for the people still out; talked about wage concessions and meatpackers in their general area; and spoke in all about 5 minutes. Bucy specifically corroborated that Langemeier made no mention of boycott; and, he also recalled Langemeier say nothing about what his plans were, if, and when he returned to the plant.

Employer did not offer any corroboration of Clemens; and specifically it made no effort to introduce the tape that Clemens made of the speaker he taped; nor explain its failure to do so.

Preliminary Analysis

The General Counsel rightly attacks the evidence offering of Employer on Langemeier's talk at the Pathfinders Bookstore as establishing that Langemeier there publicly stated he supported the boycott, as not worthy of belief because essentially it was an offer of weak evidence where strong was available. The matter need not be belabored. I agree. Clemens' testimony for a variety of reasons was not convincing; and Young's testimony points to the more probable fact that Clemens with the passage of time is confused about who he was originally sent there to tape, in that Young testified that Ottumwa management commissioned Clemens to investigate their own employee (speaker) McClurg, not Freemont's) Langemeier.

It is a familiar evidentiary principle that if weak evidence is offered of an event by a party, where strong is available to that same party, and only the more so, where as here, the offered evidence of the event is contradicted by corroborated

evidence of an opponent party, fair inference is that the strong evidence is not offered because it would only serve to further corroborate the contrary of that being asserted by the weaker evidence being offered by the party. In agreement with the urging of General Counsel, I wholly credit Langemeier's denial that he spoke in support of a boycott at the opening of the Pathfinders Bookstore at Des Moines, Iowa, on February 14; or, that he stated that he planned a slowdown, etc., if and when he returned. There is no credible evidence offered at all that he said he planned any tamper of Hormel's product.

Employer has wisely reduced its reliance on this event in brief. To the extent that General Counsel has also urged that addressment and analysis of Employer's other offered evidence that Langemeier is an unprotected boycotter is alleviated, if not obviated, because of the readily apparent weakness of its evidence offering in this particular, with that position I do not agree.

4. The boycott sticker on Langemeier's truck

Young testified that some time in mid-February 1987, Niederdeppe informed Young that Langemeier had attended a union meeting (probably on February 10), driving a truck that displayed a ''Boycott Hormel'' sticker. To the extent a Niederdeppe general denial of any knowledge that Langemeier was a boycotter may be construed as a denial of this report to Young, I do not credit it. Rather I credit that Young received the report from Niederdeppe that Young asserts on this occasion, as well as Young's earlier account of a prenotice given by Niederdeppe, that Langemeier was going on the trip to Great Britain.

However, in that regard, I do credit Niederdeppe's recollection that in a conversation with Langemeier on Langemeier's return, Langemeier told Niederdeppe that he did not talk about the boycott on the trip. Moreover ready inference lies that Niederdeppe passed that along to Young also, because this record convinces me that Niederdeppe was cooperating with Employer, since contract ratification, (at least) generally with regard to reporting any indications of member boycott activity. Not only do I credit Larson's testimony of his urging for Local Unions' support in ending the boycott, but I find that Local 22 had not endorsed the boycott; its membership, in the clear main, did not support it; and I credit Niederdeppe that members complained of it to him.

Young testified that upon receiving the mid-February report of a boycott sticker on Langemeier's truck, Young went out to Langemeier's residence to investigate the report. According to Young, Young personally observed a pickup truck at that time parked to the left and adjacent to Langemeier's garage as viewed from an (at least) publicly traveled horseshoe, semirural dirt road fronting on Langemeier's 2-acre property. According to Young's (credited) testimony, the rear of the truck at that time faced the road on which traffic regularly passed Langemeier's residence. Technically the road was not a public road, as a dedication of the road to the county had not been accepted. As a practical matter, the public (resident, visitors, service people, etc.) regularly traveled the road.

Respondent has introduced a (supporting) picture (R. Exh. 5) which Young took of Langemeier's old pickup truck on that occasion. The picture establishes the rear gate panel bore, inter alia, a sticker that said (in white letters on blue background), ''Boycott Hormel Products,'' and that the boycott sticker was flanked (inter alia) by a P-9 proud sticker on each side. Young testified that the truck was parked in such manner as to allow the tailgate, and the boycott sticker, to be visible from the road. It is open to question whether the sticker was legible from the road without some slight aid.

According to Langemeier, in the period of (early) 1987 the pickup truck was broke down, and not operated. Langemeier also testified that he had limited the use of that truck to driving short distances because of its frontend suspension problems; that the truck's transmission was shot, and that the gears of the transmission would from time to time lock up. Langemeier testified that he had the truck functional again in June 1987, when he used it to pick up newspapers for the boyscouts, but that it had been broken down in the early part of the year. Langemeier testified that when again in use in June 1987, the truck bore *no* boycott sticker. The evidence of earlier boycott sticker placement(s) on the truck (and other vehicles), and removal(s) thereof is more conveniently discussed, infra.

Langemeier denied that the truck was placed at that time (in mid-February 1987) as Young had described it, viz, aside the garage with its rear gate facing the road. Rather Langemeier asserts that (by that time) Langemeier had parked the truck in back of the garage (and house) where it had remained for months in the above-described broken down condition. Moreover, Langemeier additionally testified that from that parked position, the rear of the truck could not be seen from the public road in front of his house, nor a picture of the rear of the truck taken, without (the picture-taker, or observer) coming onto his property.

February 26, Young sent the following letter to Langemeier:

> It has come to our attention that you are actively encouraging and supporting the boycott of Hormel products. Among other things, we have evidence that your pickup truck (license plate #5–1073) carries a ''Boycott Hormel Products'' sticker. As you know, there is no labor dispute between Local #22, UFCW, and the Company. In addition to being disloyal, your actions are aimed at undermining sales, interfering with work, and disparaging the Company and its products.
>
> By this letter, you are ordered to immediately cease all boycott activities and specifically ordered to remove the ''Boycott Hormel Products'' sticker from your vehicle. You must have this sticker removed by Wednesday, March 4, 1987. Any further boycott activities, including your refusal to remove the ''Boycott Hormel Products'' sticker, will result in your termination from the Company and the removal of your name from the recall list.

It may be appropriately observed (as General Counsel would have it done) that there is no explicit assertion in this letter that Langemeier had earlier also urged a boycott while speaking at the Pathfinder on February 14, 1987. I also note that this letter did not call for a hearing (investigative or otherwise) on the matter of Langemeier's purported boycotting activity; rathe it basically ordered removal of the boycott sticker by March 4; and, general cessation of any boycott ac-

tivity by Langemeier in the future, under a threat of termination for failure to do so. Credited testimony of record establishes that Langemeier and his wife jointly own two vehicles (the above truck, and a '78 Caprice); and that Mrs. Langemeier separately owns an '81 Buick, that her mother bought for her in February 1987. According to the Langemeiers, Mrs. Langemeier, who had become very active in FUSG, and strongly supported a boycott, put the boycott stickers on each of the vehicles.

There is general evidence that Mrs. Langemeier had initially put a ''Boycott Hormel Products'' sticker on the truck some time before the Local P-9 pickets left Freemont in 1986. I do note however, that other recollection of Langemeier was that Mrs. Langemeier had probably put the boycott sticker(s) on earlier, in December 1985, after Hormel had (first) fired him. Mrs. Langemeier confirmed that she had first put boycott stickers on the older two vehicles; and I credit as more plausible her corrected recollection that she had put a boycott sticker on her Buick in February, before Langemeier received the Young letter. The record is clear and convincing that Mrs. Langemeier remained an active boycott supporter in her own right.

Upon Langemeier's receipt of Young's letter, Langemeier discussed its contents with his wife. According to Langemeier he was immediately convinced that Young was looking for a way to fire him. Since the truck was not at the time operable; stayed parked behind the house where no one could see it; and, since he did not support a boycott, Langemeier testified his immediate reaction was that he would remove the sticker as ordered. He relates, Mrs. Langemeier, who had put the boycott stickers on each of the cars (and on the Buick only recently) was initially adamant that the boycott stickers remain. Indeed, an argument developed.

Langemeier said he didn't encourage a boycott. Mrs. Langemeier then told him, that lately she had been paying the bills; that she had paid the insurance and the taxes on the truck; and she then said, ''That's my pickup truck and I'm going to affix the boycott sticker to it if that's the way I feel.''

Mrs. Langemeier essentially confirmed that Langemeier had first said, ''I better go take off the stickers,'' and, confirmed also that she had immediately said, ''No.'' Mrs. Langemeier explained that she didn't feel Young had any right ''to order us'' to remove them, especially when her name was on the vehicles; and she had paid for the insurance, the taxes, the license, and to purchase the vehicle; that Hormel hadn't helped her pay for any of the bills while her husband was off (not actively employed); and, that she felt, ''I had just as much right to say whether they stayed on or come off.''

Langemeier admitted the sticker stayed on the truck, at first. However, Langemeier testified that he shortly thought it over; concluded it wasn't worth his job; and he took the sticker off, before the March 4, 1987 deadline that was imposed by Young.

Langemeier sent Young the following letter, dated March *2*, 1987:

> I want to inform you that I am *not* encouraging or supporting the boycott of Hormel products. It disturbs me that you would even think that I had. I also want to inform you that I *am* not the sole owner of the pickup truck (license plate #5–1073) and I did *not* attach the ''Boycott Hormel Products'' sticker to it.

Langemeier did not inform Young in the letter that he had removed the boycott sticker. Langemeier explains that with his wife's feelings on the matter, he didn't know if the sticker was going to stay removed; and, he wasn't about to say to the Company: that he took it off, and, later have the Company see a boycott sticker back on. In fact, Mrs. Langemeier (initially) promptly put a boycott sticker back on the truck. I am convinced that Mrs. Langemeier did so immediately before March 4, and that is when Langemeier moved the truck from alongside the garage where Young had earlier seen it to a position in back of his house where the vehicle could not be seen from the road. In that regard, Young has testified credibly that when he went out to Langemeier's residence on March 4, to determine if Langemeier had removed the boycott sticker, he was unable to personally make that determination because the truck was behind the residence in a position where he could not see the tailgate.

Langemeier testified that during their continuing discussion on the truck sticker matter his wife relented and they took the sticker off the truck for good, before the March 4, Young deadline. Mrs. Langemeier testified relatedly, that she felt she had a right to leave the stickers on, as she (openly) supported the boycott. However, Mrs. Langemeier corroborated that (some time later), when her husband argued, ''But its not worth 23 years of my job''; and he pointed out, ''The truck don't run anyway and nobody sees it''; and asked ''What's the point,'' that (essentially) she relented, and they took the stickers off, and they have remained off since.

When Langemeier was asked why he did not then notify the Company that he had taken off (all) the boycott sticker, since his wife had now agreed to a removal of all the stickers, Langemeier at the time offered unconvincing and . flat explanation that at this time, P-9 had property nearby his home rented (with his help) as a base for their picket line operations, and as many times as he saw Young drive by his place he felt there was no need to tell the Company; and he was sure if it were still on there Young would have carried out his threat. Young clarified that he was regularly in that area in 1986, not 1987. The more plausible inference is that Mrs. Langemeier relented *after* the deadline and sometime before a parade they participated in, and a rally they attended, in Austin on March 14.

A certain videotape made of the parade in Austin on March 14, effectively confirmed to Employer that there was no boycott sticker on the Langemeier's Caprice as of that date. But then the nature of the parade that the Langemeiers' participated in, and the rally that they later attended effectively added another dimension and depth to the issue of Young's developing belief that Langemeier was an active supporter of the boycott.

5. The Austin parade and rally of March 14; kickoff of a national boycott; and steering committee meetings of the rank-and-file packinghouse conference

Young testified that some time in late February, or early March 1987, Niederdeppe had also reported to Young, that Langemeier was traveling to Austin, Minnesota, to participate in the March 14, 1987, ''Turn-up the Heat'' parade and

rally designed to build support for a ''National Boycott of Hormel Products,'' then underway.

In that regard, Respondent introduced a flyer put out *by AUSG* publicizing a ''TURN UP THE HEAT ON HORMEL RALLY,'' announcing a ''NATIONAL BOYCOTT KICK-OFF.'' The rally was scheduled to be held between 2 p.m. to 12 p.m. at the National Guard Armory in Austin, with a related parade to precede at 1 p.m. Langemeier testified at hearing that he had *never* seen this flyer before; and that his primary reason for going to Austin that day was to arrange (with others) a packing house conference; and he later informed Young of that activity, infra.

The Langemeiers traveled to Austin for the weekend of March 14–15. From early Saturday morning, March 14, until about 1 p.m., Langemeier met at the AUSG Hall with other members of the planning committee of the rank-and-file packinghouse conference to establish an agenda for the steering committee's meeting scheduled for the next day.

The steering committee meeting, attended by Langemeier and workers in the meat industry from all over the U.S., was held on Sunday, March 15, 1987; and they planned and organized a meatpackers workers conference which took place on May 1–3, 1987. (Neither the steering committee meeting of March 15, 1987, nor the later meeting of the rank-and-file packinghouse conference addressed the subject of a boycott of Hormel products.) During the Saturday planning meeting attended by Langemeier, Mrs. Langemeier met with friends in Austin, and by about 1 p.m. had rejoined her husband at AUSG hall.

As the Langemeier's drove their car out of the AUSG lot, which was on the parade route, they entered the parade, which was already enroute, and drove (I find) as part of the parade, to the National Guard Armory where they attended the P-9 rally. (To the extent certain of Langemeier's testimony is to the effect that he didn't choose to be in the parade, it is not credited. Rather I credit Langemeier's more candid testimony that everybody in the (agenda planning) conference wanted to be part of the parade, including himself. Langemeier testified that he viewed the parade and rally as with purpose to uplift the morale of P-9 members, and to show them they still had support.

It is Employer's basic contention in brief that Langemeier has evidenced that he supported the boycott of Hormel products in that Langemeier marched (by car) in the parade and attended the rally in both of which a major theme was the encouragement of a national boycott of Hormel products as a means of reinstating the Hormel strikers who were not back to work.

Videotapes of (I find) essentially the entire parade and rally are in evidence (R. Exh. 25). In that regard the record reveals that Hormel commissioned Baker and Associates of Omaha (Baker) another security consulting and investigative firm to videotape the above parade and rally in Austin. Baker's employee David Uden, as (I find) Respondent's agent thereafter videotaped (essentially) the above entire parade and rally on March 14, 1987. (The offer of R. Exh. 25 however is limited by agreement of the parties to the tapes of the parade and rally speakers through and including Guyette.)

The General Counsel acknowledges that ''Boycott Hormel'' product banners and signs were displayed throughout the parade. However, General Counsel would have noted that the parade was attended by representatives from numerous union and political groups; and that as compared with the boycott communications that were in the parade, there were an equal number of slogans, banners, and signs that spoke of union solidarity, and workers struggles that were unrelated to a boycott of Hormel products. (Equal number aside, there are a significant number of signs, etc., with visible messages on their face of support unassociated with a boycott.) General Counsel would have especially noted that no (boycott) banners or slogans appeared on Langemeier's car, or on their persons, in the parade. With regard to the Langemeiers' attendance at the rally, General Counsel notes diverse speakers, e.g., International Federation of Flight Attendants (TWA), Mine Workers, college professors, etc. but not the Langemeiers, addressed varied aspects of the P-9 strike; worker solidarity, and mutual aid.

In brief, Hormel acknowledges that Langemeier did not display any ''Boycott Hormel'' communications while drlvlng hls car in the parade; and while also acknowledging that Langemeier did not speak at the rally, Employer notes there was a large ''Boycott Hormel'' Banner behind the speaker dias, and that rally speakers twice acknowledged the Langemeiers' presence at the rally from the podium.

Ottumwa had begun a closedown of certain operations from as early apparently as some time in December 1986. At some point thereafter, certain Ottumwa work was to be transferred to Freemont, with some Ottumwa workers to follow. On March 20, 1987, Langemeier sent a letter to Young (with copy to Niederdeppe) evidencing his concern about Ottumwa employees being allowed to transfer into Freemont before a recall of Freemont phl employees. Langemeier's letter provided:

> It has come to our attention that Ottumwa, Iowa employees are being allowed transfer rights into the Fremont plant. The Employer provided verbal assurances that Langemeier and other employees on the preferential hiring list would be recalled in order of seniority as positions become available. To allow employees to transfer in to fill positions available before recalling employees on the preferential hiring list would effectuate hostility and discrimination on the part of the Employer against employees for engaging in protected activity.

On March 25, 1987, Young sent Langemeier another letter. There had been no interim correspondence from Young to Langemeier since Langemeier's letter to Young of March 2. Young's March 25 (Wednesday) letter again addresses the subject of Langemeier's support of a boycott. It is silent as to Langemeier's interim stated concern about Employer's intent in regard to the recall of Freemont phl employees. The letter announced Young's intent to conduct a hearing to clarify the matter of Langemeier as an active boycotter.

> Although you state in your March 2, 1987, letter to me that you have not engaged in encouraging or supporting the boycott of Hormel products, there is evidence to the contrary. In order to clarify this matter, I will conduct a hearing and I am directing you to report to my office at the Fremont Plant on Monday, March 30, 1987, at 10:00 A.M. You are to call and talk with me at 721-2300, extension 257, in advance of this date, should an

> emergency arise restricting your attendance at this hearing.

Under the contract, the parties regularly hold hearings in connection with the imposition of strikes (discipline). In this latter regard, Niederdeppe testified that it was his experience that the *only* time the Company would call a hearing with the Union and an employee under the contract would be when the Company was contemplating severe discipline or discharge.

At the time, Langemeier was working part-time, and Mrs Langemeier full time. I credit Langemeier that there was no one at home to accept certified mail from Employer during the week. Langemeier, who lives in a rural area, also credibly testified that he usually receives his mail on a Friday; and that it is even then sometimes difficult for him to get to the post office during the limited hours the post office is open on Saturday. Nonetheless, it is clear he did so on this occasion. Langemeier responded to Young by letter dated March 29 (Sunday), reiterating in writing that he was not a boycotter, and notifying Young that he could not attend a hearing on such short notice, as follows:

> I can not attend the hearing you scheduled for Monday, March 30, 1987 at 10:00 A.M. in your office at the Fremont Plant as I have other commitments and can not change them on this short of notice. You are aware that I am still a member of Local 22 U.F.C.W. who represent the employees at the Fremont and I request this matter be brought to the attention of Local 22 leadership and I also request the presence of Mr. Skip Niederdeppe at any hearing hopefully prearranged for the convenience of all parties involved.
>
> I want to reiterate that I do *not* encourage or support the boycott of Hormel Products and have done nothing to warrant anything to the contrary. I do not understand why you continue to harass and threaten my termination from the Company and the removal of my name from the recall list as you stated in your letter of February 26, 1987.

There followed what in part may be fairly viewed as a series of mutual, posturing and/or self-serving letters and acts by both Young and Langemeier. It is unclear when Langemeier's letter was delivered to Young. On March 30, 1987 (Monday), Young sent the following letter regarding Langemeier's failure to attend the Employer scheduled meeting of March 30, 1987. Therein, Employer expressed its view of Langemeier's indifference to his Hormel job right, and Employer directed Langemeier to communicate by phone about a rescheduling of the hearing, with statement that a failure to comply with that direction by calling Young within time certain, April 3 (Friday), would be considered a voluntary termination.

The letter provided:

> You have neglected to attend the hearing scheduled on your behalf on Monday, March 30, 1987 at 10:00 A.M. in my office in the Hormel Plant in Fremont, as you were directed in my letter of March 25, 1987. It is evident by your absence from this hearing, that you have demonstrated an indifference to your continued job rights with Geo. A. Hormel & Co. Should you desire a rescheduling of this hearing on this important matter, please call and talk with me personally at phone no. 721–2300. I will be available for your telephone call during office hours (7:00 A.M. to 11 45 A.M. and 12:45 P.M. to 4:00 P.M.). Should you neglect to call and talk with me personally as directed on or before 4:00 P.M., Friday, April 3, 1987, to arrange for a rescheduling of this hearing, I will consider your action as voluntary termination and your loss of all future job rights with Geo. A. Hormel & Co.

On receipt of this letter Langemeier timely called Young, affirming his continued interest in the job, and agreeing to attend a hearing on April 6, 1987. Young confirmed the conversation with Langemeier by letter dated April 2, 1987, which provided as follows:

> This will confirm our telephone conversation of Thursday, April 2, 1987 at 3:45 P.M., in which you agreed to be present at the hearing in my office at the Fremont Plant at 4:00 P.M. on Monday, April 6, 1987. As we discussed on the phone, it is your responsible [sic] to arrange for your union representative of choice to attend this meeting with you.

Neither this or earlier letter relating to a scheduled hearing with Langemeier described the scheduled hearing as a disciplinary hearing. By letter dated March 31, 1987, Employer's House Counsel sent Young the newspaper articles about Langemeier's trip to Great Britain, that have been earlier addressed.

Langemeier attended the scheduled meeting on April 6, 1987. Niederdeppe was present. Also present were Sherman Thurlow and Ron Nutzman. Thurlow and Nutzman were replaced Freemont strikers on the Freemont phl. They were there at Langemeier's urging. Young initially protested the presence of Thurlow and Nutzman because they were not union officials. However, when Niederdeppe urged Employer to accept their presence, Young acceded.

Young then accused Langemeier (generally) of engaging in boycott activity and activity disparaging of Employer; and Young said he wanted it stopped. Langemeier replied (as generally) that he had done nothing to hinder Hormel sales; that he supported the Hormel name; and he assured Young that he (Langemeier) would not do anything that would hurt his chances to work, as he had 22 years in the plant, and he wanted his job back. However discussion did not proceed beyond general statements to a discussion of specifics.

Langemeier brought out a tape recorder intending to tape the meeting. Langemeier testified that at the time he felt he was being set up for his name to be removed; and he told Young that he wanted to make an accurate recording because, ''I feel that you were [sic] trying to establish some motive to remove my name from the preferential hiring list.'' Niederdeppe was willing to accept a recording of the meeting by Langemeier, but Young was not. In that regard, it is undisputed that tape recording such a hearing was a practice never previously followed by the parties to the contract. Although about 45 minutes in all transpired, Langemeier remained adamant in his position that the meeting be recorded as he felt there was a need for an accurate record of the meeting. Young remained equally adamant that the meeting not be taped. The meeting (effectively) did not proceed fur-

ther, and Langemeier eventually left. General Counsel acknowledges in brief, that with Langemeier declining to go forward without a recording, nothing more happened.

By letter dated April 9 (Thursday), 1987, after first recording (its view of) Langemeier's (asserted) unjustified failure to attend the March 30, 1987 hearing (this time, and for the first tie) openly described as a *disciplinary* hearing, Employer further summarized its view of the aborted April 6, 1987 meeting, and its effect, as follows:

> You were ordered to report to my office on March 30, 1987 at 10:00 A.M. for a disciplinary hearing. You did not attend this meeting, nor did you provide me a reasonable explanation for your failure to attend. I rescheduled the hearing for Monday, April 6, 1987 at 4:00 P.M. At that meeting, in addition to Mr. Niederdeppe, you insisted on having Sherman Thurlow and Ronald Nutzman present. After prolonged discussion, I did allow both Mr. Thurlow and Mr. Nutzman to be present so that he could proceed with the hearing.
>
> At the onset of the hearing, you insisted that the proceedings be tape recorded and held a tape recorder in your hands directly between us for that purpose. You then proceeded to tape our ensuing discussion. At that time I explained to you that we have not in the past permitted proceedings to be tape recorded, and we were not going to change our policy. After much discussion, you refused to continue the meeting without recording it. I ordered you to turn off the tape recorder so that we could begin the hearing, and you refused and left my office.
>
> I am once again ordering you to report to my office on Tuesday, April 14, 1987 at 4:00 P.M. for a disciplinary hearing. I will not allow this hearing to be tape recorded. I will consider any refusal by you; to attend the hearing, or attend without recording the hearing, as just cause for discharge. I will also consider any secret recording of this hearing as just cause for discharge. I encourage you to arrange for proper union representation to represent you at this hearing.

Langemeier replied by letter dated April 12, 1987, setting forth his own view of the same incidents, and (again) asserting the earlier claim he made of (job) commitments that he could not meet with Employer on (such) short notice. At this point Langemeier introduced the matter of proper compensation for his appearance. Langemeier otherwise declared his continued interest in his Hormel job, and his specific reasons therefor. The letter provided:

> As I stated in my letter March 29, 1987, I do have other commitments and could not change them on that short of notice. I did attend a prearranged hearing on Monday, April 6, 1987 but you refused to state your reasons for holding the hearing because I had a tape recorder. If there is any truth or validity to your accusations then an open record of such hearing should oppose (sic, in context, pose) no problems.
>
> I can not attend the hearing you scheduled for April 14, 1987 as I have other commitments and can not change them on this short of notice. My wife tried to deliver a letter to you Sunday, April 12, 1987 but you refused to accept it. This letter stated my reasons for not attending the hearing scheduled. You have personally hand delivered letters to me in the past and I have accepted them. By not accepting this letter it raises a question of your intent. I also called several union-representatives to have them reschedule this hearing when all parties could attend.
>
> The Company has given me no compensation other than the settlement that was ordered by the National Labor Relations Board. If you expect me to attend these hearings on such short notice then I expect the Company to compensate me for my lost time as I do have a family to support. This is the purpose of a timely notice as I would extend you the same courtesy.
>
> I do want to state for the record that the job I have is not permanent nor does it pay the rate or the benefits my job at Hormel did and I do plan to go back to work for Hormel whenever I'm called.

Employer asserts (in brief) that the letter implies that Langemeier had checked and union representatives could not make the meeting at that time. Contrary to Employer, I conclude the letter more informs Employer that Langemeier has presently enlisted the aid of his union representatives to reschedule the hearing at a time when all can conveniently attend.

By letter dated April 15, 1987, Young sent Langemeier another letter, inter alia, asserting (at best, his view) of a refusal on Langemeier's part to attend the April 14 hearing. Young otherwise reports an agreement had been reached with Langemeier's union representatives for a disciplinary hearing to be held either on April 21 (Tuesday) or April 22 (Wednesday) on a charge of boycott activity, and (for the first time) an additional charge of *insubordination.* That letter thus provided:

> You have again refused to attend a disciplinary hearing scheduled for Tuesday, April 14, 1987 at 4:00 p.m. in my office. At our last hearing you refused to continue that hearing without tape recording it.
>
> Your continued refusal to; [sic] attend a hearing, and/or to attend a hearing without tape recording it, is insubordination. I will conduct a hearing to address this charge of insubordination, and our Company's challenge to your activity in the boycott of Hormel products.
>
> I am ordering you once again, for the last time, to report to my office for a disciplinary hearing. I will not allow this hearing to be tape recorded. I will consider any refusal by you; to attend this hearing, or to attend without recording the hearing as just cause for discharge.
>
> I have agreed with your Local 22 U.F.C.W. representatives to schedule a hearing either on Tuesday, April 21st or Wednesday, April 22nd, 1987 at a time which is preferable to you.
>
> I will expect that you will advise me of your preference of time and date for this hearing by 4:00 p.m. on Friday, April 17th, 1987.

In reply, Langemeier formally stated his position, in letter dated April 19, 1987, including calling into question (for the first time) Niederdeppe's (purported) collusive conduct with Employer. The letter specifically provided as follows:

> In response to your letter dated April 15, 1987. I am now stating my position for the record. I believe that I need to make a true record of this hearing. Hormel has violated the National Labor Relations Act when you fired me December 11, 1985. By the Companies [sic] conduct since then, I do not believe that I can afford to attend this hearing without the protection of a truthful record. Frankly, I think your refusal to accept a truthful record raises a serious question as to your intent.
>
> Furthermore, I believe that Mr. Skip Niederdeppe is in collusion with Hormel in an effort to cost me my job of 22-1/2 years. Therefore, I do not trust him as a legitimate Union Representative or anyone he may appoint to represent me. It is well known to Hormel that I have filed many legal charges against Mr. Niederdeppe and that he could not reasonably be considered as an advocate for me.
>
> For these reasons, I insist that I be allowed a truthful and accurate account of this hearing. Please be advised that I will grieve any denial of this protection. I will carry this point to the utmost.

There is no allegation on the instant complaint alleging any (related) union violation of the Act.

In a subsequent (timely) phone call to Young, Langemeier asserted a willingness otherwise to attend a hearing on April 21, 1987. However, according to Langemeier, Langemeier told Young (essentially) he (Langemeier) had been informed that Niederdeppe had not agreed to meet that day (as Young had reported to Langemeier); and that he (Niederdeppe) could not meet that day, or the next day.

Langemeier then wrote Young on April 23, 1987, recording his prior availability to meet on April 21 or 22, as follows:

> This is to confirm our telephone conversation April 21, 1987. I was ready and able to attend the hearing you had scheduled for Tuesday, April 21st or Wednesday, April 22. When I tried to contact Mr. Niederdeppe to confirm which date was suitable for him, he was not available so I contacted Mr. Vic Houser. Mr. Houser contacted Mr. Niederdeppe and relayed a message back to me stating that Mr. Niederdeppe had not agreed with you on any hearing scheduled on the above mentioned dates. Mr. Houser also informed me that Mr. Niederdeppe's schedule would not allow him to attend a hearing on either April 21st or April 22 and that he would contact you. Mr. Niederdeppe was not able to attend the monthly Union meeting on the evening of April 21st but Mr. Houser assured me that you had been contacted.
>
> Your letter dated April 15, 1987 States that you had agreed with my Local 22 U.F.C.W. representatives to schedule a hearing either Tuesday, April 21 or Wednesday April 22, yet as I mentioned above, when I contacted my Union representatives, they were *not* aware of any agreement. This raises another serious question about your motives and intent. It also raises a serious question about the credibility on the part of certain individuals. This is why I insist on making an accurate record of any hearing.
>
> I want to reiterate that this is the second time I made arrangements to attend a hearing which you scheduled on extremely short notice and for no fault of my own, did not materialize.

By letter dated April 30 (Thursday), 1987, Young tersely wrote:

> You are hereby ordered to report to my office for a disciplinary hearing at 5:00 P.M. either Monday, May 4th or Tuesday, May 5, 1987. You are responsible to arrange for a Union representative to be present. I will not allow this hearing to be tap [sic] recorded.

By letter dated May 1, 1987, Niederdeppe writes Young, stating the Union's position formally (I find, at least) raising a question on Employer's claim that boycott activity is specifically restricted by the Freemont contract (as compared with boycott conduct being specifically precluded by the Austin contract); warned against phl employee harrassment; *and*, presented Union's position on a recall of Freemont phl employees before Ottumwa employee transfer as follows:

> The Union wishes to go on record reminding the Hormel Company in Fremont that the Fremont Labor Agreement does not contain language that we understand is in the Austin strike settlement. Local 22 doesn't feel the Company has any right to harass anyone on the recall list.
>
> Local 22 once again goes on record requesting those on the recall list be reinstated to full employment at the plant.

On May 1–3, 1987 (Friday-Sunday) the earlier presaged Mid-America Conference of Rank and File Packinghouse Workers was held at Austin, Minnesota, which Langemeier attended. The latter organization's goals encompassed familiar goals of Langemeier. They were declared to be: for a decent wage; for a safe place to work; for establishing production speeds that don't destroy human bodies; and the need for the protection of a democratic militant union, and one that didn't embrace concessionary negotiation.

Announcing leaflet laid claim that 65 percent of cattle processing and 48 percent of hog processing occurred in 8 States (Minnesota; Iowa; Nebraska; Kansas; Missouri; Illinois; Wisconsin; and Texas. The billed 1-hour talk was to cover the P-9 experience; Corporate Campaign; Rank & File Support group(s); and NAMPU. The announcing leaflet specifically said the meeting would cover, ''Everything you wanted to know about P-9 but were afraid to ask.'' However, the announcing leaflet did not specifically, or explicitly refer to boycott, nor indicate encouragement of a boycott.

By letter dated May 6, 1987, in responding to Niederdeppe, Young disclaims any Employer harassment of an employee; *and* he states (essentially) Employer's longtime position in agreement on the Freemont phl employees' (paramount) rights (of recall) vs. the rights of transferees.

> This letter is in response to your letters of May 1st. The Company has never harassed any of its employees whether on the recall list or on active status. We resent the implication that we are guilty of some form of harassment. If you have a specific complaint, I strongly

> urge you to air it so that it can be properly addressed by the parties.
>
> We are pleased that you have taken a written position with respect to the issue of the rights of transferees versus the rights of employees on the recall list. Your position, as you know, coincides with the Company's position. Under the circumstances, we question the need to proceed to arbitration.

Langemeier testified that he didn't get Employer's letter of April 30 (Thursday) until after the date(s) scheduled for the hearing (May 4–5, Monday–Tuesday). Thereupon Langemeier engaged a private attorney, who wrote Young relatedly on May 15, 1987. The letter provided notice to Employer that the attorney represented Langemeier, and it stated the attorney would represent Langemeier at any disciplinary hearing. After specifically informing Young that Langemeier had not received the last Young letters (sic), until after the time scheduled for the meeting had already expired, the attorney then offered to arrange a mutually agreeable time for the three to meet. Inter alia, the letter, addressed the content of the Freemont contract materially as follows:

> I represent Mr. Langemeier. Please be advised that he didn't receive your last letters to meet until *after* the meeting times scheduled. In order to rectify scheduling problems, I propose that you and I work out a mutually agreeable time when the three of us can review the allegations in your February 26, 1987, letter.
>
> Further, I have reviewed the union contract and see nothing therein that would prevent an employee from having bumper stickers, or engage in any other nominal union support activity. It occurs to me that this a (sic) thinly veiled attempt to terminate Mr. Langemeier because he is number one on the recall list. I am informed that you have had over 100 people leave and not be replaced. Yet you have not rehired the 26 people on the recall list.
>
> In any event, I will be representing Mr. Langemeier at any disciplinary meeting. Please call and let me know when you wish to reschedule. I am available a few days the week of May 25th.

By letter dated May 9, 1987, Young informed Langemeier's attorney that the record establishes that since March 30, 1987, the Employer has afforded Langemeier multiple opportunities to meet with Employer. Young then informed Langemeier's attorney that Employer would not meet with the attorney, ostensibly because he was not a member, but I find (essentially) because the contract did not require it. (Although Employer contends in brief that by the terms of the contract, only union officials could represent Langemeier at an internal disciplinary meeting, Young clarified at hearing Langemeier's choice had to be a union member, and the attorney was not.)

Be that as it may, Young stated in the letter that the attorney was misinformed about the number of employees (leaving). Young then informed the attorney of Langemeier's early charge and the Board's (sic, but in context General Counsel's) dismissal of that charge. More presently material, the letter: (a) set forth Employer's account of holding a different view that Langemeier's conduct was impermissible under the contract; (b) gave (first-time) notice of a change in Langemeier's status; and (c) informed of Employer's scheduling of a disciplinary meeting thereon a week later, as follows:

> We disagree with your assessment of the seriousness of Mr. Langemeier's activities. There is nothing in our collective bargaining agreement which allows him to engage in these activities without discipline up to and including discharge.
>
> We will not meet with you. Under our procedures, we are required contractually to meet with the employee and his Union representative. As a matter of courtesy, since you now represent Mr. Langemeier, we are informing you that effective May 18, 1987, we are removing him from our payroll record pending the result of our disciplinary meeting.
>
> Your client should report to my office for such disciplinary meeting on Tuesday, May 26, 1987, at 4:00 P.M. If Mr. Langemeier does not report at that time, he will be permanently removed from our payroll.

By letter of even date, Young sent direct notice of disciplinary hearing (but not notice of his removal from the payroll) to Langemeier, as follows:

> You are hereby ordered to appear in my office on Tuesday, May 26, 1987, at 4:00 P.M. for a disciplinary hearing. Again, I will not allow this hearing to be tape recorded. You are advised of your right to have a union representative present for this hearing. It is your responsibility to arrange for a Local U.F.C.W. union representative to be present at this hearing.

By letter dated the same day, May 19, 1987, Niederdeppe replied to Employer's earlier letter to the Union as follows:

> The Union is in receipt of your letter of May 6, 1987. In reply to your letter, the Union does feel that at least one person, Mr. Langemeier, has been harrassed by the Company. Mr. Langemeier is not presently employed by Hormel and the Union doesn't feel Mr. Langemeier has any obligation to obey company demands and requests unless and until he is reinstated to full employment.

It is General Counsel's related position in brief that contrary to Employer assertion, Langemeier had never previously refused to meet with Young. Rather, meetings took place when they were mutually agreed upon, as opposed to attempts by Young to unilaterally set them.

A disciplinary hearing took place on May 26, 1987. Without recorder, or attorney (at his counsel's direction), Langemeier attended with Thurlow as his designated observer. Niederdeppe did not attend. Niederdeppe testified that his understanding was that Langemeier was not going to attend this meeting, and on that account, Niederdeppe didn't attend. (The record reflects that about this time Langemeier was contemplating running for union office, against Niederdeppe, and that he did not want Niederdeppe to attend and represent him.) Union's chief steward Dick Wiota, and Ray Nielson, a union official, both attended, but only at first, that is until Langemeier had designated Thurlow as his representative, at which time both the union officials left. Young was present on behalf of Employer, along with Roger Bender

as his witness. (Bender had substituted for Young in the past on an occasion of Young's absence from the plant.)

Both Langemeier and Young are in accord that at the May 26 disciplinary hearing, Young recounted four Langemeier activities to establish its contention that Langemeier was a boycotter (sic, engaged in boycott misconduct). They are: Langemeier had distributed a boycott leaflet on September 4, 1986, directly to Young in front of the plant. According to Young's view, the leaflet's language stated a plan on Langemeier's part to boycott. According to Langemeier, Young said at the disciplinary hearing that Langemeier's name on the leaflet had associated Langemeier with the boycott; (2) Young relied on certain newspaper (and conversational) information that Young had earlier received about Langemeier's trip to the United Kingdom. According to Young's view of the newspaper information, Young concluded the group had specifically targeted the trip for an export of the boycott of Hormel Products, specifically Spam (a product principally canned at Freemont) to Great Britain and the United Kingdom (where it was Hormel's principal imported product); (3) Langemeier had continued to display a ''Boycott Hormel Products'' sticker on his pickup truck into February 1987 (well after November 6, 1986), a time when Employer contends there was no longer any labor dispute existing between Employer and involved unions, Local 9, Local 22 and International; (4) Langemeier attended a parade and rally on March 14, 1987, which was previously billed as with theme of a kickoff of a national boycott of Hormel products; and (5) Young also accused Langemeier of insubordination on the basis of Langemeier's (asserted) improper delay in agreeing to attend a hearing when called by the Employer under the terms of the contract.

At hearing, Young had also asserted on one occasion that the reported statements made by Langemeier at the Pathfinder Bookstore in Des Moines, Iowa, on February 14, 1987 were also of great concern to Young, and on other occasion, that it had played a very important part in the decision (to discharge Langemeier as a boycotter). However, Young then said he did not recall whether he had made mention (at the May 26 hearing) of Langemeier's speech at the Pathfinder, but might have, only to later acknowledge, that they didn't talk about it at all.

Young's then proffered explanation that they felt if they brought the Pathfinder statement(s) up, that Langemeier would just weasel out of it (that support of a boycott, of which the Employer purportedly had tape evidence), far from convincing me of any urged importance of the Pathfinder report to Young, more convinces me, especially in the light of the stronger evidence of the statement not produced, still further of the weak evidentiary base for such an assertion.

Young's testimony in general regard to purported Langemeier statements in support of a boycott, a slowdown and tamper of Employer's product and/or production is (I find) comparatively rare instance of Young providing wholly unconvincing testimony, that is probably reflective of his addressment of a report previously presented to him, but one which had been, at best, already recognized by him as with an insufficient probative foundation, and (at worst) suspected, if not recognized to have been more probably inaccurately attributed to Langemeier.

The matter of a report of an intent to tamper Employer's products is wholly unfounded. I specifically find that Young did not bring up Langemeier's talk at the Pathfinder in any Langemeier disciplinary hearing at all. Niederdeppe corroborated that it was not mentioned in the aborted April 6 disciplinary hearing, that he attended. Moreover, I am further convinced, and I find, that the Pathfinder report was not a factor considered viable in the determination that Young made that Langemeier had engaged in boycott misconduct; and that even if it was considered, any reliance on it as a basis to support a finding herein that Langemeier had engaged in boycott misconduct, or, to even support a good-faith belief on Young's part that Langemeier had engaged in boycott misconduct is wholly mistaken, as not only is the testimony of Young in this area, in general, wholly unconvincing, but the very underlying event is shown contradicted by the more credible and corroborated evidence of record.

Langemeier explained his name on the leaflet, viz, that the leaflet was composed by the three individuals whose names appear on it; that each had their own opinions to present; that the opinions were different; that Langemeier's expressed concern was over the contract's (new) no-strike language, especially with a failure to continue no (plant or department) closure provisions in the contract; and otherwise (basically), that the leaflet did not state that he supported the boycott.

Young testified (credibly) that at the May 26 disciplinary hearing, when Young brought the leaflet up, Langemeier asserted as explanation of his name appearing on the leaflet containing the boycott statements, that he didn't read all the material before he gave them the OK to put his name on its content. Be that as it may, I do not accept any testimony or inference therefrom to the effect that Langemeier had personally distributed this leaflet publicly, inclusive of to Young on September 4, without at the time having a full awareness of its contents.

The General Counsel countered that Langemeier has testified in reasonable explanation of his (nonboycott) part in the leaflet preparation and its distribution because many of his (nonboycott) stated concerns appear in the leaflet message, and because the leaflet doesn't actually say he supported the boycott; and because there is no clear evidence presented by Employer otberwise that Langemeier ever did say he supported the boycott. Employer argues (essentially) that the leaflet is also capable of fair reading that if certain conditions were not to be contractually met, that Langemeier and the others named planned that the boycott would continue; and that in that regard the leaflet did not say, nor has Langemeier ever in print said, that Langemeier did not personally support a boycott.

The leaflet (I find) doesn't clearly say that Langemeier did, or did not support or encourage the boycott. The leaflet permits of a number of readings, e.g., that, without Langemeier intending thereby to express his own personal sponsorship of a plan to boycott, he only brought that to the attention of his counion members voting on ratification, as one practical factor, of many factors being presented for their overall consideration in voting whether or not to accept any contract as presently negotiated. (The strike settlement at Austin was not at that time negotiated.) The leaflet is also capable of fair reading that Langemeier had joined with other named spokesmen from other units who were all now of like mind that a boycott would continue unless certain contract were provided for in the contract. In short the leaflet (I find)

is ambiguous as to Langemeier's personal intent in regard to the boycott.

The record does reveal that at about the same (negotiation) time, Freemont unit employee Braun had observed Mrs. Langemeier actively engaged in attaching ''Boycott Hormel'' stickers to unit employees' vehicles in the Freemont parking lot. No party contests that Langemeier's activity in the preparation and distribution of this leaflet was anything other than clear union protected activity. They differ solely on the probative value of Employer's much later use of the ambiguous leaflet to itself shed light on Langemeier's boycott intentions in certain of his later activities.

At the May 26 hearing, Young told Langemeier that newspaper accounts showed the purpose of the group's trip to Great Britain was to export the boycott of Hormel products; and Young asserted that Langemeier was a member of that group. At the disciplinary hearing Langemeier immediately denied being aware of any articles that did so; and he stated that wasn't *his* purpose in making the trip. Langemeier testified relatedly that one of the main objectives of the trip was to show solidarity with the coal miners; that some members of the coal miners union had also made the trip with them; and that for him it provided a one-time opportunity to share mutual labor experiences on an international worker level.

In that regard, Young's related testimony is that he was not aware at the time that any (united) mine workers had made the trip with the group; and the contrary does not appear (at least) clearly from the newspaper clippings in evidence. (One account is under byline of Kipp Dawson, otherwise identified of record as a member of the UMW.) In any event, I find that credible evidence of record has established that some members of the UMW did accompany the group. At the disciplinary hearing, Langemeier reiterated that he did not support the boycott; and he also testified that he told Young at the time (and I agree) that he is not responsible for what a reporter writes, but (I find) in these circumstances, only for his own conduct, and for the reasonably foreseeable consequences of his own actions, that is, for what Langemeier himself did.

Thus, the General Counsel correctly would have it observed that (in contrast with Guyette and Collette), review of newspaper clippings shows that none of the articles that Young had relied upon as report of Langemeier's support of a boycott, attribute any quotes (or comment) to Langemeier on anything other than matters related to union and protected concerted activity subjects of safety, contract concessions, etc. I agree; and I find Young knew, or reasonably would have known that, upon fair and close reading of the newspaper accounts.

Langemeier testified relatedly (and credibly) that he had personally never seen *any* publication that had associated his name with a boycott. None has been presented herein; and Employer has candidly acknowledged as much in brief, in pressing its argument from overall circumstances, that, ''No newspaper reported that like Collette and Guyette, he (Langemeier) too was pleased that his trip to the U.K. paid off in more Britons 'cramming-their-Spam.'''

No newspaper article (I find) contained information that had reasonably linked Langemeier by name to having personally urged a boycott of Hormel products (particularly Spam) in Great Britain. I do observe that no newspaper clipping locally, or otherwise in this country or abroad, as presented herein, had reported a Langemeier disavowal of support of the boycott that was shown to have then been affirmatively urged by certain others in the group; and later by the entire (deposed) executive board of P-9.

With regard to Young's charge that Langemeier had attended the boycott parade and rally in Austin on March 14, 1987, and that Langemeier's car was preceded and followed by cars with boycott signs; Langemeier testified (and I find) that *his* car did *not* contain a boycott sticker. Moreover, again candidly, Employer has conceded in brief that, ''unlike the vehicles in front and behind him in the March 14, 1987, parade, the vehicle Langemeier was driving did not display Boycott Hormel balloons or stickers.'' Though I also find, as established by Employer, that Langemeier's car was preceded by some boycott banners, and followed immediately by a vehicle with a boycott Hormel sign, I credit Langemeier that he did not have an assigned position in the parade. Neither did some of the other vehicles that participated in the parade appear to present direct or visible evidence of their support of a Hormel boycott, other than to arise from their general participation in the parade.

According to Langemeier, at the May 26 disciplinary hearing, after Young questioned Langemeier about being in Austin and participating in a boycott Hormel parade and rally, Langemeier *specifically* informed Young that he was in Austin that day as part of a Rank and File Meatpackers Workers Conference (R&FMWC) planning committee, that was to organize a May 1–3, 1987 conference, and not to engage in boycott activity. Indeed, Langemeier testified that he had received his own leaflet invitation dated March 5, to take part in that planning meeting; and Langemeier asserts that while he was aware there was also a parade and rally arranged by AUSG for that day in support of the unrecalled P-9 strikers, he testified that he personally had never seen the AUSG leaflet that had billed the parade and rally in terms of a national boycott kickoff.

Langemeier testified (I find) credibly that he was at the AUSG hall in Austin the morning of March 14 (Saturday) to plan with others the agenda for the Planning (Steering) Commitee's meeting held the next day, March 15. The minutes of the actual committee meeting held on March 15, CPI Exh. 2, confirm attendance and participation by Langemeier, and otherwise the planning committee's discussion of a wide band of union and concerted activity subjects. The minutes do not indicate there was any discussion by that group of a Hormel boycott in connection with that organization, though they did propose in their planning for P-9 members interaction with the group. (Langemeier remains active in the organization.)

To the extent however, certain other testimony of Langemeier is susceptible of supporting an assertion made by him that he had joined the subsequent parade by virtue only of the AUSG hall being located on the parade route, a timing happenstance, and police parade direction, I reject any and all such notions. Rather, I credit other Langemeier admission, however reluctantly to have in the end been given, that Langemeier, as most of that same planning group, intended to participate in the parade.

Relatedly, I credit Young's recollection that at the May 26 disciplinary hearing, Langemeier had at first told Young that he was not in the parade, and that he was just driving through town. Significantly, Young testified that he then told

Langemeier (essentially) that there was evidence (the videotape) that he was there. However, I also find, that Young confirmed, somewhat begrudgingly, that Langemeier may have also mentioned that he was there for (to help arrange) the meat planning conference, a clearly union, and/or protected concerted activity.

The Langemeiers, I conclude and find, knowingly and actively participated in the parade. The parade and the rally were widely billed by AUSG as with central purpose to turn up the heat on Hormel, and as a National Boycott Kickoff. I cannot accept that Langemeier did not become aware of that AUSG billed purpose. However, Langemeier testified that he participated in the parade and rally to uplift the spirits of the unrecalled P-9 strikers; and to show them that they still had support; and in that regard, the Langemeiers significantly participated in the parade without evidence of any boycott paraphernalia on their person, or car; and they were not alone in participating in the parade in that manner. There were others who participated in the parade and rally, who, (at least) like the Langemeiers, did not appear to visibly exhibit a boycott sticker on their person, or car.

Still other of the parade participants visibly advanced only slogans, and other sign evidence of their solidarity with, and their support of P-9, such as Langemeier has essentially claimed motivated him. Apart from what may be appropriate import from general participation in the parade, insofar as visible presentation is to be considered and evaluated, (I find) the parade was made up of both those who openly manifested their support of a Hormel boycott, and those who did not; with some of the latter group not visibly manifesting their support of the boycott advancing other message of their support, and remainder not any.

There is no contention or evidence advanced to establish that all unrecalled Austin phl employees have encouraged and supported a boycott; nor that Employer viewed any of those employees to have automatically engaged in boycott misconduct by having participated in this parade, though Employer has a firm policy of dismissal when it is established that ah employee engages in boycott activity. Thus, I conclude and find that Langemeier's mere presence in the parade, as with other employees like him, did not by itself establish that Langemeier was thereby engaged in boycott misconduct.

When Young in the disciplinary meeting of May 26, once again brought up the boycott sticker on Langemeier's truck, Langemeier told Young that he thought he had previously explained the sticker situation to Young. Langemeier then reiterated to Young that he did not encourage; and he did not support the boycott of Hormel products. In sum then, Langemeier had informed Young three times, twice in writing (letters of March 2 and 29), and during the meeting of May 26, that he was not a boycotter. Young testified that he didn't believe Langemeier's assertions that he did not support, or encourage a boycott of Hormel products.

In addition to his testimony that he told others that he believed that boycotts were ineffective, Langemeier testified (at instant hearing), in further explanation for his non-support of a boycott, that if a Hormel boycott did prove effective, the Freemont plant (where he had been and hoped again to be employed), being the oldest plant, would probably be the first to close.

According to Langemeier, Young at length suggested in the meeting, that since Langemeier had (repeatedly) said he did not support the boycott, Langemeier would not (then) mind taking out an article in the Austin and Freemont newspapers (publicly) stating this. Young confirmed that before this Langemeier was adamant that he was not a boycotter; and Young testified that Young was convinced that he was. Young essentially corroborates that Young asked Langemeier if he would make a statement (in the papers) announcing publicly he was not a boycotter, and that he didn't support the boycott of Hormel products.

There is some related conflict in this matter. Langemeier's additional assertion is that Young had asked Langemeier to advertise Hormel products in the newspaper. However I credit Young's recollections that it was Langemeier who had characterized Young's request as a request that Langemeier take out an advertisement of Hormel products; and that Young had immediately disclaimed that intent, telling Langemeier, I just want you to clear up this matter of whether you're a boycotter or not.

Contrary to Young's hearing assertions of conviction that Langemeier had revealed himself as a boycotter in the February truck sticker incident and in his participation in the parade and rally of March 14, this very statement made by Young at the disciplinary hearing, fairly reveals Young still entertained some doubt.

Langemeier's additional assertion that Young had asked that the article specifically state that Langemeier didn't support Jim Guyette and the Hormel strikers anymore, is not credited, though that may have been Langemeier's initial and lasting impression of Young's request. In any event, however, I conclude and find relatedly that the Act imposed no obligation on Langemeier's part to make a public statement in a newspaper that he did not support a boycott of Hormel, however that action might have helped Young in his dilemma deliberation.

Taken aback by the request of Young that he take out an article in the newspaper to the effect that he didn't support the boycott, Langemeier replied he would like to confer with his attorney before responding. Young asked Langemeier to let Young know by Friday (May 29). According to Langemeier, Young then said that Langemeier was fired. Young testified relatedly that he told Langemeier that the preponderance of the evidence was that he had been involved in these activities which were a boycott of Hormel products, and Langemeier was fired.

Employer contends that Young discharged Langemeier on this occasion for the double reason of his boycott activities, and for his insubordination based on Langemeier's attempts to frustrate an internal contract disciplinary process. Niederdeppe testimony supported Langemeier. It is the Union's position that Employer does not have the right under the contract to demand that Langemeier appear at certain times and places without first putting him back on the payroll.

Article VIII, Grievance Procedure, section 2, Work Instructions, governs the right of an employee to request immediately, and the union within a day, a hearing (then to be held in 3 days) on a matter of a third notice (strike) or immediate disciplinary action (e.g., discharge).

Section 3, Disciplinary Proceedings, provides in regard to an Employer's holding of a hearing, as follows:

> 1. The Company shall not hold any conference or interview with an employee for the purpose of, or in connection with, any investigation of that employee or in connection with the imposition of discipline or the issuance of a warning which is to be entered in the employee's record (provided such interview or conference goes beyond the announcement of the disciplinary action of the delivery of the warning) unless the Company shall have advised the employee of his/her right to be represented at such occasion by a Union representative of his/her choice and shall afford the employee, if he/she or the Union representative so request, the opportunity to consult privately with such representative before the commencement of the meeting.

The contract does not explicitly state that Employer may order a phl employee to attend a meeting called by Employer. However Niederdeppe, in acknowledging generally an Employer practice under the contract whereby the Employer could call a hearing, and one that usually meant severe discipline, has persuaded me that Employer could within the scope of the contract call for either an investigative or disciplinary hearing on phl employees provided that it otherwise followed contractual conditions for calling such hearings. However, in the absence of a return of Langemeier to its active payroll, I conclude there is merit to Union position that the hearing had to be arranged at reasonable time and place, which fairly meant times and places as might be reasonably mutually agreed. Indeed, certain of Larson's testimony relating to a local manager's attempt to get an employee suspected of boycott activity to come in for such a hearing if possible, lends significant support to the conclusion made here that that particular element of the hearing was not firmly set by contract term or practice.

6. The postdischarge incidents

a. *The Scott Braun observation*

On that same day, May 26, 1987, some time between 5:30 to 7 p.m., Scott Braun, a Freemont unit employee, was in a local Freemont grocery store with his wife and 3-year-old son to pick up, inter alia, a cake for his son's birthday. The store is the biggest grocery store in Freemont. In passing through an aisle, Braun had earlier observed Spam products on a shelf, without any boycott stickers attached. About five minutes later, as Braun was in the front of the store, looking down aisles for his wife, Braun looked down the aisle where the Spam products were shelved.

Braun testified that when he looked down that aisle he observed Langemeier standing in the aisle, some 40 feet away, conversing with a woman. Braun testified that at the time he observed the woman, she had something in her hand and he saw her put it on the price mark located on the shelf (front). At that point, Braun observed Langemeier look up towards Braun, appear to say something to the woman, and promptly walk away from Braun towards the back of the store, while the woman walked toward and right by him.

When Braun investigated, he observed a 3 inch by 1 inch white wording on blue background sticker on the shelf front that read, ''Boycott Hormel Products.'' The sticker was affixed to the product price list, and another one was on a can of Spam. Braun has testified unequivocally, ''[t]hey were not on there when I walked down the aisle before.''

Braun testified that he had seen the woman previously at union meetings; and that he had seen this woman previously put boycott stickers on the bumpers of cars in the Hormel parking lot around the time of contract negotiations, prior to the vote. Although not previously introduced to Mrs. Langemeier, Braun testified that he knew the woman he saw was Mrs. Langemeier from what he was told by others on earlier occasions. In any event Braun has identified Mrs. Langemeier at hearing as the woman he saw with Langemeier on May 26, 1987, and as the woman he earlier saw put boycott stickers on the car bumpers.

Braun testified that without Young asking him to do so, he subsequently reported the incident to Young. When asked, he (initially) explained, ''As a Hormel worker I felt it was my duty because the product that I'm putting out and working for and feeds my family, this person is out destroying that.'' Cross-examination established that he didn't see Langemeier with a boycott sticker. Indeed, that he never had seen Langemeier with a boycott sticker.

By letter dated May 28, 1987, Langemeier replied to Young's suggested advertisement (sic) in a local newspaper that he did not support the boycott of Hormel, with suggestion of his own, that Young contact (another) Langemeier attorney about arranging a ''personal service contract.'' The letter provided:

> In our conversation May 26, 1987, you expressed an interest in using my name on an advertisement for the George A Hormel & Co. to appear in the Austin and Fremont daily newspaper. Please contact my attorney and he will draft a personal service contract. My attorney is David Twedell, 7557 Rambler Suite 750, Dallas, Texas 75231 Phone No. 213-739-2524

Young (properly) ignored Langemeier's letter of May 28.

By letter of June 8, 1987, Langemeier made an inquiry on his status, as follows:

> In a copy of a letter addressed to my Attorney Mr. Thom K. Cope dated May 19, 1987 you stated that my name was removed from the payroll record effective May 18, 1987 pending the result of a disciplinary meeting held May 26, 1987. At that hearing you informed me that you *were* removing my name from the recall list and after today, you would not have to follow me around and check on me anymore. Yet when Mr. Skip Niederdeppe contacted your office during the week of June 1, 1987 and asked your replacement Mr. John Dick about my statues (sic, in context, status), Mr. Dick informed him that you had *not* removed my name from the recall list.
>
> Please clarify the facts. Has my name been removed from the recall list or not? I will expect your reply within ten days upon receipt of this letter.

By letter of June 15, 1987, Young replied:

> This is in response to your letter of June 8, 1987. By way of clarification; you have been terminated, and your name has been removed from the preferential recall list. As I explained to you in our last meeting, our

> evidence demonstrates that you have engaged in 5 disloyal activities against the Hormel Company. These disloyal activities undermine sales, and interfere with work in contravention of Article I Section 4 of the Working Agreement.

b. *Cedar River Days honors Spam*

The record reveals that Employer planned and publicized a program in Austin to celebrate the 50th birthday of its product Spam. The City of Austin, Minnesota, declared that its own ''Cedar River Days'' celebration over the weekend of July 3–5 would also honor the occasion.

Several organizations supportive of P-9 countered with their own program calling for a broad attack of Spam, and its birthday celebration. Inter alia, the attack included an invitation to crash Spam's birthday party on July 4th with essentially a parade, holiday camping and/or picnicking in a billed ''Cram Your Spam Days'' celebration on July 4th. Langemeier did not participate in that parade, though he attended the picnic.

c. *The Jerry Rosenthal incident*

AUSG sponsored a certain leaflet entitled ''Spam Scam'' which asserted as the truth of that product, that, ''Serious health hazzards [sic] and human suffering are packed in every can.'' The leaflet urged people not to buy Spam because of asserted high fat and salt content, and its low nutritional value.

The leaflet accused Employer Hormel of having an uncaring attitude to injured workers in its Austin plant; recited (earlier) wage and benefit reductions; and referred to strikebreaker forces breaking the strike, ''leaving over 1400 workers without jobs.'' The leaflet urged that you (the recipient) not eat Spam or any other Hormel product, specifying some nine products by name made by Hormel or its subsidiaries ''until Hormel cleans up its act.'' The leaflet also requested a BOYCOTT of certain food franchises that used Hormel products.

Langemeier acknowledged that his wife, as a member of FUSG, had received a supply of the above leaflets from AUSG. Langemeier testified that he did not hand out the above ''Spam Scam'' leaflet at Freemont. Rosenthal testified that on one occasion, after a regular (June 9) union meeting closed, Langemeier laid a ''Spam Scam'' leaflet in front of Rosenthal, who was then a member of Local 22's executive board, and wearing at the time a T-shirt advertising Spam. Rosenthal relates that Langemeier pointed to the shirt and said to Rosenthal, ''I don't know if I would be advertising for that stuff. That can kill people.'' With that Langemeier left. Rosenthal sat down and read the leaflet, which he had not seen before.

On cross-examination Rosenthal affirmed that Langemeier had not said to boycott Spam; and indeed, Rosenthal, who had testified that Langemeier had recently in response to a prehearing greeting called him a scab, also testified that Langemeier had never said anything to him about a boycott. There is no evidence otherwise that Langemeier had distributed ''Spam Scam'' leaflets at the meeting.

d. *The recall and discharge of Sherman Thurlow*

On July 20, all the employees on Freemont phl were recalled to work at Freemont, including Sherman Thurlow. Langemeier acknowledged at hearing that later, in August of 1987, Employer discharged Thurlow for wearing a ''Cram-Your-Spam'' T-shirt; that an arbitrator had subsequently sustained Employer's discharge of Thurlow; and that the General Counsel had since refused to issue a complaint on Thurlow's charge because that conduct was not deemed protected concerted activity.

There is no evidence presented that Langemeier ever wore a ''Cram-Your-Spam'' T-shirt. To the extent the Thurlow discharge, arbitration result, and related charge dismlssal are advanced to support Employer's contention that Freemont contract language, though not having an explicit prohibition on employeee boycott activity (as does Austin), nonetheless bars boycott activity by Freemont unit employees, material use of the Thurlow discharge circumstances must be rejected as proof of such for two reasons: (1) Langemeier did not engage in such conduct; and (2) the parties are not in agreement, and the arbitrator's decision in the matter was not introduced to support the specific contention being made.

Analysis, Conclusions, and Findings

Central to the resolution of the instant litigation, the Supreme Court has held that Section 8(a)(1) of the Act is violated if an employee is discharged for misconduct arising out of protected activity, where it is shown that, despite an employer's good-faith belief of same, the employee did not actually engage in the misconduct, *NLRB v. Burnup & Sims*, 379 U.S. 21, 22 (1964). Therein the Court said of the General Counsel's burden, that in order to prevail over a misconduct discharge it must be:

> shown that the discharged employee was engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct.'' [Id. at 23.]

The underlying burden of proof rule of *Rubin Bros. Footwear*, 99 NLRB 6I0, 611 (1952), as reiterated by the Board and approved upon review by the Supreme Court in, *Burnup & Sims*, supra, 379 U.S. at 23, remains controlling here, *Meat Packers (Hormel & Co.)*, 287 NLRB 720 (1987). Thus once an employer has established grounds to support an honest belief that an employee has engaged in misconduct

> [t]he General Counsel must go forward with evidence to prove that the [employee] did not, in fact, engage in such misconduct. The employer then, of course, may rebut the General Counsel's case with evidence that the unlawful conduct actually did occur. At all times, the burden of proving discrimination is that of the General Counsel. [*Rubin Bros.*, supra, 99 NLRB at 611.]

General Counsel would however note that the Employer's defense of an honest belief itself requires some specificity in the record linking the *particular employee to particular allegations of misconduct*, *General Telephone Co.*, 251 NLRB 737, 739 (1980).

The General Counsel has made out a very strong prima facie case of Langemeier's engagement in union and other protected concerted activity, over a long material period of time. Thus, Langemeier was engaged in union, and protected concerted activity when he engaged in the various acts as shown herein in continuous support of P-9's nonconcessionary bargaining stance, and (preboycott) exercise of its right to strike: (1) in pursuit of P-9's own aspirations for a fair contract, in contrast with the concessionary contract that P-9's officers and membership felt had previously been imposed on them; (2) in support of P-9 unit employees pursuit of their own perceptions of what should be established as the conditions for a safer, and more injury-free working environment in a comparatively new plant; and (3) in support of P-9's officers' and members' (at least) initial efforts to achieve and/or preserve what they perceived as a beneficially responsive and democratic union in the meatpacking industry, viz, one open to being run from rank-and-file membership up, as in a local union providing its members with an opportunity for a full review of any proposed contract, before seeking a membership approval of the contract; and in subsequently accepting rank-and-file membership direction therein, particularly in regard to a directed nonentry of any concessionary collective-bargaining agreement.

Langemeier engaged in union and concerted activity in his activities in support of P-9 also on the practical level of (4) perceived Employer-plant interdependencies, i.e., in his personal belief held with many others that what contractually happens at Hormel's plants are directly interrelated, including specifically, that if Local P-9 this time took (agreed to) the concessions that Employer Hormel sought at its comparatively new flagship facility at Austin, his own Union, Local 22 would have the same, or more concessions, later imposed (pressed) on them as the oldest of the Employer's production plants; and relatedly, that offsetting chain agreements, and contractual provisions allowing for interplant unit support should be preserved.

Finally, Langemeier engaged in conduct constituting concerted protected activity (5) when he engaged in concerted activity in pursuit of the broader views he then came to hold that a recent period of seeming widespread, multiemployer concessionary bargaining (and perceived period of unusual plant sales and corporate realignment in his own and other industry) could be halted, and eventually reversed only by the organization of worker activities on a broader multiemployer, national and even international scale.

Accordingly, I am wholly convinced by the evidence presented of record that in engaging in conduct lending support to P-9's collective-bargaining stand to obtain these various objectives, in himself striking in support of that effort, and in relatedly traveling to Austin, and elsewhere around the country for these purposes, indeed abroad (with coworkers and other employees) to mutually share his own labor experiences therein with others, and to seek and obtain the financial and morale help of others in the P-9 struggle that he had effectively made his own, that Langemeier was deeply engaged in an exercise of union, and other protected concerted activities for mutual aid or protection within the meaning of Section 7 of the Act; as Employer well knew, and has candidly conceded.

Indeed, Employer concedes in brief that if Langemeier did not also *personally* endorse the contended unlawful boycott of Hormel products, then Hormel has violated Section 8(a)(1) of the Act by discharging Langemeier for the contended unlawful boycott conduct in which he in fact did not engage, and which Employer would apparently otherwise concede, and (in any event) I find, arose out of his above-protected conduct in general support of P-9.

Where General Counsel and Employer notably part is in General Counsel's further contention that Langemeier personally did not agree with, nor support *all* the means used by P-9's officers and (certain) members (and others) to achieve their mutually shared contractual goals and objectives. Thus the General Counsel contends in particular, and Employer contests, that Langemeier did not agree with, or ever take an active part in an engagement in boycott activity, and even more materially, that Langemeier did not share or participate in P-9's (deposed) officers' poststrike settlement open declaration to continue the struggle thereafter with primary reliance in engagement in an ever more broadening boycott activity to bring about the desired prompt return of *all* unreinstated strikers.

Apart from the factual dispute whether Langemeier is shown by the evidence to have himself embraced the P-9 dissident officers' and (certain) P-9 members boycott strategy, vis-a-vis, e.g., continuing in his own course of action to personally provide, and gather financial and morale support for the unrecalled P-9 (and other) strikers, until they are recalled, the involved statutory considerations would appear to involve the broad issues of (a) how an employee's statutory right to engage in a boycott may be limited by contract term and condition, *or*, by other majority collective-bargaining principles of law; and (b) the reach of statutory protection to employees if they continue to engage in union, and other protected concerted activity (in part) with those who have engaged in statutorily *un*protected boycott activity. The weight of credible evidence of record convinces me in the end that these are the central and dispositive issues.

Contrary to urging of General Counsel, Young has denied categorically that he was motivated in the May 26 discharge of Langemeier to discriminate against Langemeier because of his union activities, or because Langemeier had previously, or recently filed charges against the Employer, or because Langemeier personally headed the Freemont phl for recall. In the end, I am persuaded to Employer's view that a discriminatory Employer motivation against Langemeier in the *May 26 discharge* is not shown reasonably established by General Counsel's evidence. In that regard, I specifically do not find on the evidence presented that Young discharged Langemeier on May 26 because Young wanted to punish Langemeier for having honored P-9's picket line earlier during the first 6 months of 1986; nor because Langemeier had filed charges in 1985 (that were already settled); or, because he had recently filed non-meritorious charges in 1986.

As earlier noted, there is no complaint allegation herein that Employer, after June 4, or June 24, 1986, failed to recall Langemeier for discriminatory reasons. To the contrary, specific charges thereon were recently filed, fully investigated, and determined to be without merit.

In that regard, I have earlier noted that the February 26, letter of Young, though it charged Langemeier with actively encouraging and supporting the boycott of Hormel products, and demanded removal of a boycott sticker from his truck under penalty of termination, it otherwise ordered only

Langemeier's cessation of all boycott activities in the future. Young's threat of an imposition of termination for continuation of perceived boycott activity was certainly not disparate in its treatment of Langemeier, but rather was wholly in keeping with Employer's established and well publicized policy, being now firmly enforced both at Austin, and at Freemont in this month of February. In such circumstances, several other conclusions appear readily warranted from the content of this letter.

First, on its face, the letter of February 26, did not call for an investigatory, or disciplinary hearing on the boycott matter. Thus, the immediate removal of the boycott sticker from Langemeier's truck, would serve to avoid his termination, as would his general avoidance of boycott activity in the future. Under the parties established past practice, no further Employer discipline was being indicated at this time. Secondly, although the letter had issued after Langemeier's speech had been given at the new Pathfinders Bookstore in Des Moines, Iowa, there is no explicit, or implicit reference therein to (purported) Langemeier recent statement (or call) for a continued boycott of Hormel products, which absence only the more has convinced me that substantial evidence did not exist in Young's mind even at that early period that Langemeier had made such a remark.

It is General Counsel's additional contention that it was the General Counsel's final dismissal of Langemeier's prior charges of 8(a)(1), (3), and (4) discrimination on February 19, which had then prompted Young's opening February 26 letter. However, I have found it was Niederdeppe's recent report of the boycott sticker on Langemeier's pickup truck, and Young's interim observation of the truck (still) with a boycott sticker on it at Langemeier's residence on February 23, that more reasonably had led to the February 26 letter issuance.

Moreover, I am persuaded that this letter did not reasonably constitute Young's opening gambit now looking for a pretext reason on which to discharge Langemeier. This finding is based on the circumstances that: (a) Young personally knew a boycott sticker was still on Langemeier's pickup truck; (b) the Employer had a firm corporate policy prohibiting its employees from boycotting Hormel's products in any form; (c) the Employer either had, or would shortly discharge P-9 dissidents (all deposed P-9 officers, and certain members) for their continued boycott acts; and (d) the letter to Langemeier (only) called for the sticker's removal, and Langemeier's cessation of all boycott conduct in the future.

Contrary to urging of General Counsel, I conclude and find that Young was not at this time emboldened from his recent receipt of the General Counsel's charge-appeal denial, e.g., embarking on a pretext, with the charge of a discriminatory nonrecall of Langemeier now successfully behind him. To the contrary evidence of record more indicates that Langemeier, and others, had not been recalled because as of the end of the strike in 1986, the Freemont plant had overloaded its employment complement to perform the work allocated from Austin during the strike, and which employment constraint in turn was only further exacerbated with Austin when work returned to Austin. In terms of the related events as litigated by the parties herein, there is no persuasive evidence of animus presented to the contrary.

Thus I rather find that the February 26 letter not only (a) constituted on its face, and in the light of the related evidence of record, a reasoned and measured step taken upon Young's personally confirmed report that Langemeier's truck, contrary to established and well announced company policy, still bore a boycott Hormel sticker on it, but (b) in following on the heels of the recently determined nonmeritorious charge alleging prior discrimination, the letter itself provided a nondiscriminatory option to Langemeier of a simple removal of the sticker and cessation of all like conduct in the future. Under all the above circumstances, the letter was more congruous with a continued absence of unlawful discriminatory motivations, than not.

The General Counsel correctly observes otherwise that activity by an employee in support of an employer boycott is not misconduct, so long as the activity is linked to an ongoing labor dispute, *NLRB v. Local 1229 IBEW (Jefferson Standard Broadcast Co.)*, 344 U.S. 464 (1955); and that such labor dispute need not involve the boycotting employee's own bargaining unit, as Section 7 permits an employee whose bargaining unit is not on strike to nevertheless express sympathy for striking employees in the same local union, or in a sister unit (as here), and to advocate and solicit a boycott of that employer's product in support of those striking employees, *Coors Container Co.*, 238 NLRB 1312 (1978); *Firestone Tire Co.*, 238 NLRB 1323 (1978); *Texaco, Inc.*, 189 NLRB 343 (1971). An employer's loss of image, or income, does not disqualify the protected conduct; nor is advocacy of a boycott (in itself) the equivalent of a Jefferson Standard attack on the quality of an employer's product or an attempt to demean the company, *Wolfie's*, 159 NLRB 686 (1966).

General Counsel relatedly contends, Employer would appear to agree, and in any event I find, that a labor dispute was ongoing from October 4, 1984, through November 6, 1986, *Emarco, Inc.*, 284 NLRB 832 (1987). Clearly that period encompassed and thus protected Langemeier's preparation and distribution of the leaflet in September 1986, and his trip in a group to Great Britain, whatever view is to be taken of those actions otherwise.

According to Langemeier's wholly corroborated testimony, it is P-9's view that a labor dispute (struggle) continues and will continue until all unrecalled strikers are returned to work; and while Langemeier acknowledged that the collective-bargaining contract dispute and related strike is over, and he personally at least acceded that International and Employer have agreed the labor dispute is over between them, Langemeier (essentially) expressed some (pragmatic, if not legal) disbelief of that in testifying, how can they say that there is no labor dispute when some 800 striking employees are still not back to work.

The Employer's substantive related argument is that as of November 6, 1986, certain contractual conditions of employment governing the return of strikers were then set in place by agreements in both Austin and Freemont with the (respective) consent of the lawful union leadership and a majority (ratification) of the rank-and-file at each location. In that regard, Employer established that one such applicable and governing term and condition of employment is that those employees who had been on strike in Austin and in Freemont, as of (until) June 4, 1986, would not return to work until work became available for them, even though less senior workers were on the job as of June 4, 1986.

Employer centrally argues therefrom that any attempt by an employee, whether as an individual or member in a minority group, to change by economic force the contractual terms and conditions of employment that have thus been established for the recall of strikers by a majority representative, is unprotected activity; and thus the Employer may enforce contractually established terms by imposition of discipline (including discharge), upon any Hormel employee or Hormel minority group who would seek effectively to undermine them, *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 55 fn. 2, 58 fn. 6, 65, fn. 15, 61–62, 67–70 (1975); and *Energy Coal Partnership*, 269 NLRB 770, fn. 3 (1984).

Employer thus contends that after November 6, 1986, members of the dissident P-9 group, or an individual employee employed elsewhere, and whether actively employed, or on phl (Langemeier), who engaged in boycott conduct in an attempt to exert economic pressure on Employer to change terms of the negotiated Austin and Freemont contracts, without having the approval of the established collective-bargaining representative (Local 9, Local 22, or International), are engaged in statutorily *un*protected activity.

The record is clear beyond the questioning in that respect that the objective of the boycott as proposed and conducted by all P-9 officers, and some P-9 dissidents, was with purpose for the prompt return of all unrecalled strikers. Support groups of the P-9 dissident group effectively attacked Employer's continued employment of replacements and earlier returning strikers (with less seniority) in having variously publicized: (a) ''*Well over 800 workers remain jobless* at Austin alone. The Company operates only with SCABS who crossed a *Sanctioned Picket Line*''; (b) with Employer forced to hire outside consultants to monitor products, ''produced by the dredges of society they hired''; and (c) with mass-disseminated leaflets urging the recipients to boycott Hormel supplied businesses serving ''scab meat.''

In *Emporium Capwell*, supra, although a collective-bargaining agreement existed with applicable nondiscriminatory provisions, and with available grievance procedure, a limited number of unit employees in one (of several) minority-group(s) disavowed an attempted application of the available grievance procedure to them; made a direct demand upon their employer that the employer negotiate certain issues of racial discrimination as perceived by them directly with them; and the employees then instituted picketing, and a consumer boycott at the store to enforce their demands. After unsuccessful effort at warning the employees against persisting in such conduct, the Employer later fired the employees, when they continued the conduct.

On charges and a complaint brought on the discharges, the Board found that the employees were lawfully discharged for attempting to bargain as a minority group with the company over terms and conditions of employment as they affected racial minorities. In upholding the Board's position, the Supreme Court in pertinent part stated: ''Under the scheme of . . . [the NLRA] . . . conduct which is not protected concerted activity may lawfully form the basis for the participant's discharge.'' Id. 420 U.S. at 72. In *Energy-Coal*, supra, the Board subsequently concluded and found that similar minority group actions, which are designed to change existing terms and conditions, when established as being contrary *to the wishes of the current majority representative*, are not protected from employer discipline.

The General Counsel's legal argument that the Freemont contract does not clearly restrict otherwise lawful boycott activity on an employee's own time, on its face would appear to have merit, because of the failure of the Freemont contract language to specifically prohibit boycott activity by covered unit employees. E.g., the parties knew how to provide clear and explicit language to do so when they intended to do so, as in Austin.

Employer argues alternatively that other newly negotiated language in the Freemont contract effectively produced the same limiting effect. I need not resolve that contention.

Local 22 (and International) negotiated an agreement with Employer in the Freemont contract that Freemont unit employees for the life of the new contract would not engage in any sympathy strikes. Assuming, without necessarily deciding, that Local 22 did not thereby or otherwise in its agreement on terms clearly and unequivocally negotiate a restriction on the Freemont employees right to engage in boycott activity, the exercise of such boycott activity by Langemeier in support of P-9 objectives would even then appear not to be statutorily protected.

Thus, even were I to assume arguendo, without deciding, that the Freemont contract language does *not* preclude Langemeier from engaging in boycott conduct, in general, because his Union, Local 22, has not clearly and unequivocally bargained away a statuory right of Freemont unit employees otherwise to engage in such conduct, Langemeier's exercise of a then permissive *means* (e.g., to engage in boycott conduct), in my view, could still not be exercised to obtain an *end* that is shown, in the circumstances presented herein, to be itself statutorily *impermissive*, viz, where engaged in as here in support of minority demanded change in the established terms and conditions of an existing contract, and against the wishes of the exclusive majority representative.

It is no saving consideration then to assert that Langemeier did not personally make a demand upon Employer to bargain, if his boycott objective is established to be the same as that of a P-9 group, or P-9 supportive AUSG group. This is so since the P-9 group, under all the attendant circumstances here presented, has (at least) made a clear demand for an immediate return of all unrecalled strikers to end the boycott, contrary to the conditions of the contract as specifically negotiated by Employer with Local 9, then the lawful exclusive collective-bargaining representative of all Austin unit employees, that not only would the Austin unit employees not engage in boycott conduct, but, that available jobs would first be present to effect an economically orderly return of the former strikers placed on a phl. It is only the more clearly so if it coincides with AUSG's objective to build support for a nationwide boycott which, as Employer has accurately stated in brief is, alternatively, ''designed to impose sufficient costs on Hormel to make it less costly for the Company to, at the least, reinstate those 650 strikers.''

Nonetheless, it is important to distinguish that the mortal (or economic) combat continued by certain P-9 individuals outside the contract and the statute over that issue, lies between Hormel and P-9 dissident officers, members, and other Hormel employees, whether actively employed or on phl, who have elected after November 6, to continue to engage

in unprotected boycott conduct for purposes contrary to terms of an applicable contract and strike settlement, but not any unrecalled P-9 strikers who have not personally engaged in such boycott conduct, though they may have continued to seek and receive interim financial aid and morale support from wide and common labor supportive sources, including Langemeier.

Accordingly, the central issues are clearly revealed to be whether Langemeier has personally engaged in unprotected boycott (mis)conduct; and if not, whether the Employer has established reasonable grounds for its belief that Langemeier had engaged in the boycott misconduct; and if the evidence shows only the latter, whether General Counsel's evidence in the end predominates in establishing that Langemeier had not engaged in the *particular* boycott misconduct that Employer in good faith had charged Langemeier with at time of discharging him.

Employer defends its discharge of Langemeier on May 26, 1987, on the basis that Young then possessed cumulative evidence that established Langemeier engaged in unprotected boycott activity (after November 6), or, that (at least) constituted reasonable grounds for Young's good-faith belief that since Langemeier had previously engaged in certain boycott activity, Langemeier would not be averse to doing so again to obtain the goal as then had been pronounced by P-9 (deposed) officers, and that (assertedly) Langemeier mutually shared with P-9 officers, viz to effect the immediate return to employment of all unrecalled former striking employees through the conduct of a boycott.

Thus, to show Langemeier's actual boycott motivation, the defense rests on two Langmeier (contested) boycott acts in 1986, of what notably would in any event be (uncontested) protected boycott activity even if shown engaged in by Langemeier in 1986, to establish that two other questioned Langemeier acts of (contested) boycott misconduct had occurred in 1987, for which Langemeier in the end was rightfully fired. (It is noted then as somewhat of a paradox that the two 1986 acts, which are thus uncontestedly *lawful* boycott conduct under any view, if shown engaged in by Langemeier, are sought to be used by Employer in this manner to shore up a contended 1987 *unlawful* boycott motivation in the two 1987 acts complained of.)

The two acts thus alleged to involve the actual unlawful boycott misconduct for which Langemeier was fired are: (1) the presence of the ''Boycott Hormel Products'' sticker on a pickup truck earlier reportedly used by Langemeier, and which Young had personally observed at Langemeier's residence in February 1987; and (2) Langemeier's presence and participation in a parade and rally on March 14, that had been previously publicly billed by AUSG as for a kickoff of a national boycott of Hormel products. (Although Employer has additionally defended that Young had fired Langemeier for insubordination in an alleged improper avoidance of a contractual disciplinary hearing for months, I find, infra, there is not persuasive factual merit to support that urged grounds.)

To show the claimed predischarge 1987 boycott motivation, the defense relies on (a) the September 4, 1986 leaflet, which stated above Langemeier's (and Guyette's and McClurg's) typed name(s) that only complete job restoration through a fair contract will end the boycott; and (b) Langemeier's later trip to Great Britain in a group, certain members of which had (reportedly) called for a boycott while on the trip, and who have on return publicly proclaimed in a local newspaper that a goal of the trip to extend the boycott of Hormel products to Great Britain had been accomplished. Employer contends it has thereby established that Langemeier in the past had personally engaged in conduct in support of a boycott.

Employer would thus specifically use the two prior incidents of Langemeier's preparation and distribution of a boycott leaflet in September 1986, and his late September early October 1986 trip to Great Britain to show Langemeier had continued with an active boycott motivation, when in February 1987, the ''Boycott Hormel Products'' sticker was reported and observed on his pickup truck; and as proof that Langemeier had continued with like motivation to encourage and support a boycott as the real explanation for his participation still later on March 14, 1987, in a parade and rally at Austin that had been billed by AUSG as for a national boycott kickoff, even though it is undisputed that Langemeier carried neither boycott sticker or other identifying boycott slogan on his car, or person, in the parade; nor made any statement in support of a boycott at a rally held later that day.

The parties are in general agreement, and I have in any event found that Langemeier's (and others') initial conduct in the preparation and distribution of the September 4, 1986 leaflet, and his discussion of its contents with other Freemont unit employees, regardless of the leaflet's boycott connotations, was clear union, and protected concerted activity at that time. This is so because Langemeier (and Guyette and McClurg) was (were) free at that time to present for their fellow employee-members' evaluation on the issue of whether they should ratify the collective-bargaining agreement(s) as negotiated, inter alia, the effect of the consumer boycott on Employer, since both Local 9's negotiated contract at Austin and Local 22's negotiated contract at Freemont were still unratified, and thus open to any member's, or member group's opposition to the negotiated terms prior to the respective unit ratification votes held on September 7, 1986.

Contrary to General Counsel's urging, Employer contends in brief, and I am convinced and find on the related evidence presented of record in support thereof, that Young did not in any real sense fire Langemeier on May 26, 1987, for having (lawfully) distributed boycott leaflets on September 4, 1986, or for his end of September, early October 1986 alleged boycott trip to Great Britain. Rather, I am persuaded that Employer only permissibly contends that in May 1987, Young could reasonably use the above circumstances of Langemeier's earlier distribution of that boycott leaflet, as well as Langemeier's trip to Great Britain in a group that had reportedly established a boycott there, to shed light on whether Langemeier had personally engaged in boycott misconduct later; or, that Young in reliance thereon could have come to believe in good faith that as in the past, Langemeier continued in close support of P-9 officers who had now (after the strike settlement of 1986) directly and openly declared their support for the continuation of a boycott until all unrecalled strikers were returned to employment, and thus, Langemeier had also personally become an active boycotter.

The material statement in the leaflet, which is to the effect that only a complete job restoration through a fair contract will end the boycott, is at best ambiguous on the point that

Langemeier at that time actually was personally motivated to support or encourage a boycott of Hormel Products. The boycott statement itself does not explicitly call for, nor does it constitute the clear statement of personal support of use of the boycott *by* Langemeier that Employer urges.

But Young need not necessarily have established therefrom that Langemeier actually supported boycott conduct, rather only that Young had a good-faith belief therefrom that he did. In that respect, a reasonable reading of the leaflet's statement that only complete job restoration through a fair contract will end the boycott does afford support to Young in his asserted belief that Langemeier had at that time aligned himself with a boycott use, in that it is also capable of a fair reading that all three named individuals had intended to jointly deliver the message of the leaflet that absent complete job restoration through a fair contract being achieved, the boycott would continue.

However, the leaflet's other recitement of already pledged boycott support by certain prominent individuals or organizations does no more than depict a present state of formidableness of the boycott action. It does not add support to Employer's claim that the leaflet portrayed a statement of Langemeier's personally committed support to a boycott.

Much less visible support arises from Young's asserted reliance on the trip to Great Britain to supply the necessary Langemeier boycott motivation. With a consideration of other material evidence, it is effectively dispelled. I have earlier found that none of the published reports about the Great Britain trip even appear to have attributed any boycott support statements to Langemeier. Niederdeppe's credited testimony of Langemeier's timely report of personal noninvolvement with the boycott, upon his return from the trip, is then especially significant. First it corroborates that Langemeier's present denial of having urged a boycott of Hormel products in Great Britain is not only *not* of recent fabrication, but that Langemeier's report to Niederdeppe on his Great Britain trip activity (materially) that he was not involved in any boycott activity over there, was given to Niederdeppe at a time when it still was unquestionably permissible for Langemeier to urge a boycott. I credit Langemeier testimony that establishing a boycott of Hormel products in Great Britain was not *his* reason for making that trip.

Of course it is what Young knew, or had reason to know of Langemeier's part in making that trip that is also significant. However, in that very regard, I have difficulty accepting that Niederdeppe would have earlier informed Young of Langemeier's intention to make the trip to Great Britain and then not have told Young in their weekly discussions held on matters of interest to each other, what Langemeier had told Niederdeppe about the trip upon Langemeier's return from the trip, and specifically of Langemeier's claim that he was not personally involved with a boycott on the trip, particularly in light of the nature of the boycott announcement of Guyette and Collette that followed so shortly thereafter.

Moreover, I further note in that regard that Young revealed that related reports on Langemeier had continued even thereafter from Niederdeppe. E.g., it was Niederdeppe who first reported the circumstance that Langemeier had driven to the recent (February 9) union meeting in his pickup truck which still had a boycott sticker on it. I conclude and find that General Counsel's evidence presented on the Great Britain trip has effectively dispelled any meritorious reliance by Young thereon to establish that Langemeier thereby engaged in boycott misconduct, then, or later. Indeed, the weight of credible evidence more convinces me to a contrary finding.

The only direct evidence available of record with regard to the placement of boycott stickers on the Langemeier's vehicles is the testimony of Langemeier that he didn't believe in a boycott and he didn't do it; and the wholly corroborative testimony of Mrs. Langemeier, that she believed in a boycott, and she *did* do it. The record is clear that at least in certain material times, Mrs. Langemeier was personally engaged in such acts, and observed by others in the act of doing so.

In contrast, this lengthy record establishes that Langemeier has never been observed with a boycott sticker in hand let alone observed attaching one to any surface. Moreover, I credit Langemeier's almost aside, but, in my view, very significant revealment that Mrs. Langemeier had affixed the first ''Boycott Hormel Products'' on their pickup *probably* in December 1985, after Hormel had first discharged her husband for wearing a ''P-9 Proud'' sticker. That credited testimony is itself very revealing of *both* the probable impetus for Mrs. Langemeier's *initial* participation in boycott conduct, and other activity strongly supportive of P-9 (e.g., regular picket line relief activity in early 1986); and as directly explaining her observed renewal of boycott activity, on May 26, 1987, immediately following Employer's second discharge of her husband as found infra.

Relatedly, Employer would have the postdischarge events, which are substantially disputed, first addressed because Employer contends they most clearly establish, or confirm Young's belief that Langemeier is, or became a boycotter, and that Langemeier's testimony in denial at hearing, is not worthy of belief. However, essentially, I do not agree in attaching such dispositive weight to the incidents, precisely because they postdate the discharge, and thus did not effect the actual discharge. Moreover, they are discernibly amenable to differing and offsetting explanations. The incidents however do produce other significant consideration.

The Langemeiers have denied the incident that Braun observed and reported, viz, that Mrs. Langemeier, with Langemeier in accompaniment, affixed a ''Boycott Hormel Products'' sticker(s) to a Hi-Vee grocery store ''Spam'' shelf on May 26, 1987, immediately after Langemeier's second discharge by Young; and related Langemeier's seeming furtive, and Mrs. Langemeier's more brazened, but hasty departures. Resolution of the central factual disputes on this matter need not be belabored. In agreement with Employer's urging, I credit Braun, as I do not believe that unit employee Braun has made this reported incident up out of whole cloth; and the Langemeiers' accounts have the effect of denying the entire incident.

Thus, I credit Braun's account that he saw Mrs. Langemeier, on that occasion, but notably not Langemeier, affix a boycott Hormel sticker to the HiVee product shelf price-facing for Hormel's Spam product. Nonetheless, I discount the urged dispositive significance of this incident because I am convinced that Mrs. Langemeier more probably acted as she did at that time because of renewed anger with Hormel over the fresh (second) discharge of her husband just as I have found that she had similarly reacted in initially affixing the boycott sticker to their truck (and other vehicle)

in December 1985, following Hormel's initial discharge of Langemeier, as Langemeier had persuasively earlier testified.

Rosenthal's account of Langemeier's statement made about not advertising Hormel's Spam product for health reasons is also credited. In this instance however, I find the nature of the restricted evidence offered to afford (at best) only limited probative value. Thus, Langemeier's remark to Rosenthal is concluded to have limited probative value because: it was made between two union members at a union meeting, in a union hall; it did not reasonably constitute a request by Langemeier that Rosenthal generally boycott named Hormel products; to the contrary Langemeier's statement limitedly addressed the subject of the propriety of advertising a product on which others had raised a nutritional and/or health question; relatedly, it was made by one union member to an executive board member of his own union, who was himself advertising that very product openly before the union membership body; and finally, the remark was an isolated one, in that it is not shown to have been repeated, nor Langemeier shown to have distributed, or otherwise addressed the Spam Scam leaflet there, or elsewhere, at any time.

In my view, and contrary to Employer's urging, both these postdischarge incidents do not aid substantially in establishing that Langemeier was a previous boycotter. In any event, Young surely had not considered them in reaching *his* earlier decision to terminate Langemeier for engaging in contended unprotected boycott activity.

However, in light of my discredit of the Langemeiers in regard to their complete failure to recall the Braun described incident, I am then presented with occasion to also the more closely analyze their accounts of the earlier related (1987) alleged boycott events that prompted the initial February 26 letter; led directly to Young's call for a hearing; and that eventually led to Young's discharge of Langemeier.

Thus, I shall do so in particular with regard to Langemeier's effective contest of Young's observation of the truck; and Langemeier's claim of early removal(s) of the truck boycott (and other) sticker(s) observed personally by Young in February 1987; and particularly in review of the record evidence offered in support of Langemeier's testimony that he was principally in Austin that day for reason other than participation in the Austin parade/rally of March 14; that he personally didn't participate in the parade and rally for any declared purpose to encourage or support a boycott; but rather, he had participated to uplift and strengthen the morale and resolve of the unrecalled P-9 strikers; and to show them that they still had support.

Essentially, I have found that the people participating in the March 14 parade, ostensibly presented a mixture of support messages for the P-9 struggle; thus some visibly evidenced boycott support; some not; some evidenced other support message; and some evidenced no message other than that to be derived from their supportive participation in the parade. Employer would have it noted that no one in the parade (or rally) had visibly presented (or stated) a position against the boycott.

Langemeier has testified relatedly, and I find credibly, that he didn't believe in the effectiveness of a boycott, but he recognized that others did, and he felt they were entitiled to their own.opinion. Langemeier also testified that he wasn't an officer of P-9, and he was thus not responsible for their policy. Significantly Langemeier testified that in those circumstances, if he didn't believe in something (the boycott) he wasn't going to say anything for it, but then neither would he say anything against it.

Employer also relies on evidence that Langemeier attended a boycott rally that day. A large boycott banner was prominently placed up on the dais in the Armory where the rally was held. Videotape establishes that many, if not most, of the speakers spoke of and in support of the boycott. However, speakers also spoke on many other matters, e.g., in regard to other mutually shared principles of solidarity, morale, and financial support in the ongoing struggle for return of P-9 strikers to employment.

The central fact of the matter is that Langemeier did not speak at this rally at all. Any speaker's acknowledgement of his presence there did not include assertions that his presence there was in joinder or support of any boycott message beinq delivered.

Employer had hard evidence (a videotape) of all of these refinements of Langemeier's conduct that day. I conclude and find on the evidence presented that there was nothing in Langemeier's actual participation in the parade or his attendance at the rally that day that would serve to substantively identify him as being in specific support of the boycott, other than his mere presence and participation in each, which Young must have known.

Thus from Young's review of the the videotapes made of both parade and rally (in evidence), Young had hard evidence of the lack of any specifically clear act or any statement made by or attributed to Langemeier to evidence that Langemeier was actively engaged in boycott conduct, i.e., other than his participation in the parade (without boycott identification) and his presence at the rally (without any boycott statement attributable to him).

Young knew that Langemeier had become a very active and well-known union activist in recent years; and I have no doubt that in more recent period Young had also become increasingly frustrated with Langemeier whether because of Langemeier's evidenced ''jail-house lawyer tactics,'' or his flair in developed sophistication, that had in either event brought him right up to the line of support or encouragement of a national boycott being openly urged by others with whom he regularly associated, and against which there was firm and unyielding company policy.

It began following Niederdeppe's report of a complaint of Langemeier's arrival at a recent union meeting (February 9), in a pickup truck which still had a boycott sticker on it and Young's personal confirmation of the truck and its reported condition at Langemeier's residence. To the extent that the Langemeiers' recollections of the location of their pickup truck in February do not allow for the initial parking of the truck to the side of the garage where Young testified he had first observed and taken a picture of it, their testimony is not credited.

In this area (I find) Young's testimony was clearly the more creditworthy. Moreover, evaluation of the pictures placed in evidence, and in particular, an evaluation or analysis of indicated sun shadows depicted therein vis-a-vis then contested location of the truck, definitively corroborates Young's account as the more accurate one.

Accordingly, I now conclude and find that when Young first observed the truck at Langemeier's residence on Feb-

ruary 23, he saw it with its tailgate and a boycott message facing the road in front of Langemeier's residence. It would be unwarranted on this record however to further conclude that the truck had been parked in that manner for that purpose, or that from that position the sticker was easily legible from the road.

In my view the more material consideration of this incident is that a complaint had been registered with the Union that a boycott sticker appeared on a truck that Langemeier had reportedly recently publicly used to drive to a union meeting; the Union had (under the spirit of the negotiated contract, if not its letter) brought the incident promptly to the attention of Young; February 23 was the first chance that Young had had to follow up on it; and when he confirmed that the boycott sticker was still there, he promptly informed Langemeier that he wanted the sticker removed. By letter of February 26, Young ordered Langemeier to remove the boycott sticker from his truck by a day certain, March 4.

Although Langemeier responded timely in writing that he did not support a boycott, he didn't inform Young that he had taken a boycott sticker off the truck as directed, ever. To the contrary, Langemeier at that time only additionally informed Young that it was not he who had put the sticker on the truck; then advised that he didn't solely own the truck, reasonably implying that he and his wife jointly owned the truck; and (essentially) leaving fair inference open to Young that the boycott sticker might remain on the truck on his wife's ownership account, which (I find) it did, for a time, but under circumstances which in the end render the disputed fact of whether the sticker remained on the truck or was timely removed, essentially moot.

Langemeier's assertion that he did not advise Young that he had removed the sticker, because of a real concern over his wife's predilection to put it back on, and Young's inference from the fact the letter did not speak to removal, to then question the removal, are both plausible. The Langemeiers' fully corroborative accounts of holding heated internal discussions about the matter had the ring of truth to them, and were persuasive, except on the point of when Mrs Langemeier finally agreed that the boycott stickers should be removed, and stay removed. I find they were in full agreement on the removal of stickers from all their vehicles at least by March 14, on incontrovertible parade (video-tape) evidence, though I am less persuaded that a *mutual* decision had been actually made before March 4. (E.g., Mrs. Langemeier's agreement to removal after March 4, would then explain the failure of Langemeier to inform Young formally that the boycott stickers were removed.)

In any event the record is clear that from Young's vantage point, Young had to go out to Langemeier's residence again to determine if there was a removal of the boycott sticker, or not. When he did, Young was thwarted in the effort by the removal of the truck itself to a position on Langemeier's property (behind the Langemeiers' residence), where Young could no longer see the truck's rear gate-panel from the road to confirm a removal. But if Young couldn't see the truck from the road, he also necessarily knew that no one else could see it from the road either, for as long as the truck remained in its present location, which it did, in disrepair, until June. Young acknowledged that he had never seen the truck with a boycott sticker on it thereafter.

While there, Young had observed a new boycott sticker on a Buick. General Counsel's evidence established that that car was recently purchased, and belonged solely to Mrs. Langemeier. Even more significantly, Young knew from hard evidence of Langemeier's vehicular participation in the parade on March 14 that there was no sticker on Langemeier's other car then being publicly used.

It is appropriate to observe, on the basis of time passage, that it was not likely a direct result of Young's aborted attempt on March 4 to confirm a removal of the truck boycott sticker that Young first subsequently determined in letter dated March 25, 1987, to arrange a hearing with Langemeier on the boycott issue on March 30. In the interim following the issuance of the February 26 letter and Young's March 4 observation that the truck was located where it could no longer be seen, and prior to the March 25 letter directing a hearing on the issue of a Langemeier engagement in boycott activity, two additional events had occurred, namely, the March 14 parade and rally in Austin in which Langemeier had participated, and a subsequent written inquiry by Langemeier on March 20 in which he expressed his concern about any transfer of Ottumwa unit personnel to Freemont before Freemont phl employees were recalled.

To be sure, Langemeier's March 20 letter had made references to certain assurances Employer had previously given, with the referenced assurances reasonably relating to Employer's assurances reportedly given to the Region priot to dismissal of Langemeier's then recent charge. However, it was not Langemeier's written request for the clarification that Freemont phl employees had priority in recall before the Ottumwa employees' transfer to Freemont that occasioned Young's direction of a hearing, because the concern being advanced there by Langemeier was one wholly consistent with the position which Employer was prepared to take to arbitration, if not agreed to in the interim by the Union.

Thus, I am wholly convinced that what had significantly happened in the interim and what had now prompted Young's pursuit of a hearing on the matter of Langemeier as a boycotter was the intervening parade and rally held on March 14 that Young knew had been billed by AUSG as a ''National Boycott Kickoff,'' and the fact of Langemeier's (taped) participation in it.

There is no independent allegation that Employer engaged in surveillance of Langemeier (or others) on March 14. It will be recalled that the Austin contract contained an explicit provision that Austin unit employees would not engage in boycott activity. In those circumstances, Employer's videotaping of the parade in Austin that had been publicly billed (albeit by AUSG) as a National Hormel Boycott Kickoff, it seems to me, was a reasonable procedure for Employer to follow to provide for a capture of any demonstrably clear evidence of an Austin employee's support of a boycott on that occasion that might violate the contractural provision of the Austin contract, and thus constitute misconduct. (The same reasoned justification would apply to Employer's videotape of the similarly publicized boycott rally.) Thus, even if the matter of the Employer's taping of Langemeier's participation in the parade (or presence at the rally) were to be considered as matter(s) fully litigated herein, in my view there is no merit to a contention that Employer thereby had engaged in an unlawful surveillance (unlawfully taped)

Langemeier's participation in the parade (or attendance at the rally).

It would appear to further follow that in regard to Young's related statement made to Langemeier at the May 26 hearing, on the occasion of Langemeier's asserting in regard to the parade that he was just driving through town, that there was evidence that he participated in the parade (and rally), Young did not thereby unlawfully tell employee Langemeier that Employer had engaged in surveillance of his union activities, as alleged in the complaint. Not only is there otherwise no surveillance allegation in the complaint relating to the February Pathfinder incident, but weight of credible evidence of record has convinced me for earlier reasons stated, that that matter was not mentioned in the May 26 hearing.

At the May 26 hearing, and prior to Young's discharge of Langemeier, Langemeier had also significantly told Young, that Langemeier was actually up in Austin earlier that Saturday morning to attend to union, and/or other protected concerted activities, immediately before he and the others had participated in the parade and rally. To the extent that Young's relation to Langemeier's weaseling out of things may be related to this incident, though it may be one way of describing an employee's unexpected revealment of engagement in clear union and protected concerted activity, it is not an accurate one; and though Young's exasperation with Langemeier is only the more likely shown as being heightened, it doesn't diminish the statutory protection to be offered the same.

In this regard, I have little doubt that at this time Young honestly believed that the circumstances that Langemeier seemed to *always* align himself with, and be found in the company of people who prominently supported the boycott, and the fact that his wife (at least at times) had also prominently supported the boycott, along with the certain other ambiguous things he knew about Langemeier, in all probability meant that Langemeier himself supported the boycott. But that isn't necessarily factually so; and it is not so in the eyes of the Act that protects an active unionist's participation in Union and other concerted activities, who personally hasn't evidenced a joinder in unprotected boycott conduct for which he might be fired.

This is the case here with Langemeier, unless one is prepared to conclude on the facts presented, that Mrs. Langemeier, by virtue of her spousal relationship *alone*, without other proof, is automatically the implied agent for her husband; has effectively fronted for him all along, and most notably done so impermissibly recently in carrying out the truck boycott sticker activity predischarge and store boycott activity post discharge that Langemeier was not privileged to do himself. I am simply not persuaded to so find agency from the evidence offered of record.

Not only have I found that Employer's first discharge of her husband in December 1985 had prompted Mrs. Langemeier to initially engage in boycott sticker activity against Hormel, but it must be recalled that Mrs. Langemeier in her own right engaged in much picket line relief activity for P-9's established picket line at Freemont; and she on her own, frequently wrote articles for the local newspapers about the P-9 striking employees' activities. On the entire evidence of record herein, it must in the end be concluded that Mrs Langemeier is her own individual person; that she is entitled to her own opinions; and though she is responsible for her own conduct, she is not an employee of Hormel that is subject to their discipline on that account. Neither would the statute permit Employer to discipline Langemeier on account of any of her activities, absent a showing of her agency for that purpose.

The fact is there is no evidence presented ascribing boycott statements to Langemeier at all, other than the September 4 leaflet distribution. That is why Employer has advanced a leaflet at least 6 months old; that clearly arose in different (lawful) circumstances; and one at that, that more probably was intended (at least) in Langemeier's case, to impart a different message, and it is why Employer has also sought to similarly use a trip to Great Britain, the accounts of which have failed to ascribe any boycott statements directly to Langemeier, and as to which Young was more likely interimly presented with additional reason to discount, all in order to shore up missing evidence of actual, or a predeliction on Langemeier's part in 1987 to engage in unlawful boycott conduct, and thus with strained purpose in that manner to some how taint his otherwise indicated protected conduct in participation of a parade and rally at Austin and show it as conduct that was actually motivated in some surreptitious design to actually encourage or support a boycott.

General Counsel's evidence predominates that Langemeier didn't do that. Thus I find on the evidence presented that Langemeier on March 14 did not say, or reasonably indicate that he encourage or supported a boycott of Hormel products. He did not do that, that is, unless it is to be concluded that with an AUSG publication of the parade as a kickoff of a national boycott, Langemeier's participation (indeed any Hormel employee's participation in that parade and rally) thereafter meant that Langemeier's participation was with an impressed purpose to support or encourage the boycott, regardless of what other union, and protected concerted activity purpose or goal is reasonably raised by Langemeier in explanation for his participation in, and reasonably shown served by the parade and rally. That is not what Employer appears to have contended herein; and in any event, in so far as advanced for application to Langemeier, it is a contention, in my view, that the Act does not allow.

In sum then, General Counsel's evidence has established a very strong case that Langemeier engaged in widespread union, and protected concerted activities over a long period of time in support of common causes shared by many P-9 members and unrecalled strikers from different Hormel plant locations, but principally the unrecalled strikers at Austin. Employer in turn presented evidence sufficient to support an arguable good-faith belief on Young's part that since Langemeier had previously distributed a boycott leaflet in September 1986, and had made a trip to Great Britain in which (at least) some others on the trip endeavored, and later reported that they had succeeded in exporting a boycott of Hormel products there, both acts reasonably indicated that Langemeier was later engaged in unlawful boycott activity when in February he had reportedly driven a truck with a boycott sticker that Young had thereafter confirmed was still on the truck, and when in March he had participated in a parade (and rally) billed by a P-9 support group as being for a kickoff of a national boycott of Hormel products.

However, with all the parties' evidence heard and considered, General Counsel's evidence has now predominated in

showing that the evidence is actually very weak that Langemeier ever personally embraced a boycott. With long view of the evidence, Langemeier's role in the preparation and area of interest in the boycott leaflet of September was more probably as he asserts, not boycott oriented. But in any event, it was both lawful at the time engaged in, and appreciably distant from the discharge. The evidence makes it appear even more clear that Langemeier did not personally participate in any intervening (lawful) boycott activity while on the trip to Great Britain.

With regard then to the contended unlawful Langemeier acts charged as occurring in February and March, the evidence clearly has established that Langemeier did by letter dated March 2, timely inform Young in writing that he did not support or encourage a boycott, and also that he didn't put the sticker on the truck. Though Langemeier left inference open to Young therein that the sticker had not been removed from the truck, the evidence has established beyond dispute (at least) that the truck was promptly removed from public view; never again displayed, or driven in use by Langemeier on public streets with a boycott sticker on it; and that rather, within 2 weeks (and before any Employer-called hearing) the Langemeiers' had publicly driven in an Austin parade without any boycott sticker (or other boycott paraphenalia) on their vehicle.

Finally, there is no evidence presented deemed sufficient to discount the fact that Langemeier's presence in Austin that day enabled him to participate earlier in a clear Union and/or protected concerted organizational activity not associated with the boycott. Although he and others of that group planned to, and did participate in the parade and rally for unrecalled P-9 strikers; the incontrovertible evidence of that parade and rally shows that Langemeier (and many others) participated in the parade and rally in support of unrecalled P-9 strikers, without any ostensible evidence of their support of a boycott.

In short, although Young had arguable grounds to initially call for a hearing on the basis of a good-faith belief that Langermeier had engaged in unlawful boycott activity, the evidence of record predominates that Langemeier did not personally engage in the charged unlawful boycott activity for which he was fired, which I am convinced was primarily for his participation in the March 14 parade and rally in Austin; and not the February 26 truck sticker incident, the resolution of which, given the passage of the declared March 4 deadline. Young had already acceded to. In that regard, it is not my understanding of General Counsel's ultimate burden under *Burnup & Sims*, supra, that with an employer establishment of initial grounds (as above) for an arguable good-faith belief that misconduct had occurred, that the General Counsel may meet his ultimate burden thereafter only by the production of evidence the nature of which is to ensure a winnowing out of the possibility of any mental reservation on the employee's part in the matter, but rather only that the evidence in the end must be such as to be seen to fairly predominate in showing that the employee more probably than not, did not engage in the particular misconduct charged. This the General Counsel's evidence has done.

Moreover, the evidence presented of record to explain the correspondence that Young (and Langemeier) generated, otherwise convinces me that Langemeier was difficult, but not insubordinate in the matter of arranging for the hearing that Young desired, but which carried its own problem baggage. Young generally sought to set the dates for an Employer-called hearing which in prior practice (i.e, with an employee on active payroll) usually meant the Employer's administration of severe discipline. Langemeier knew that.

Langemeier, however, was not on the active payroll, and Young in dealing with an employee in that circumstance still sought dates for hearing, frequently (I find) on simply too short notice, especially so, after Young had occasion to know (because Langemeier told him) that Langemeier's position was measurably different than that of an active employee that as a nonactive employee he was working elsewhere; that there was no one at home during the day to accept the certified mail for him; that because of his job, he was limited in the time that he could pick up the certified mail at the Post Office to Saturday; and he couldn't meet on too short a ootice, (e.g., on a following Monday) without jeopardy to his job.

Young's assertions that Langemeier was evasive about his job; and generally that he didn't believe Langemeier, are not persuasive. There was no evidence presented that Langemeier was not working as he had asserted; or, that he did not experience the postal restrictions that he claimed.

In such established circumstances, Young's March 30 letter summary is deemed to be particularly self-serving and not appropriate summary of Langemeier's response to that date, whether or not Young had received Langemeier's response to his March 25 letter.

Langemeier's telephonic response on April 2 to Young's next letter was surely prompt in agreeing to a meeting. I have no doubt that, when he eventually did meet with Young on April 6, Langemeier's then successive pressing for use of a member as a personal representative, and a tape recording to be made of the hearing for an accurate. account, which led to a drawn out stalemate of that meeting; and his later persistence in requiring both a reasonable time to arrange for his own affairs and for a union representative for any employer called meeting hereafter; as well as his successive reasonably explained missed meeting, and his then introduction of an attorney that was not provided for by the grievance procedure, all only further frustrated Young, in his own persistence to get Langemeier to a hearing that he contended was required by the terms of the contract.

However, Langemeier had substantive union and contractual support in many of these areas; e.g., from the contract, on the use of a separate union representative(s) of his choice; from the Union, on the use of a tape recorder under his circumstances (though it was a departure from practice); and perhaps most significantly, in that regard, the Union supported Langemeier on a basic position that until Employer actually put Langemeier on the (active) payroll, Young didn't have the contractual right he was asserting in repeatedly demanding that Langemeier meet at times and places that Young alone selected, without having the employees' agreement; and that, in the Union's view, the repeated demanding of such meetings in that manner under threat of termination was a harassment of a phl employee.

Under the contract, an active employee (technically) had the option of foregoing any hearing at all (in which case, however, he would then forfeit opportunity for contractual review of any discipline imposed). In contrast with the Employer's clear contractual base and/or established practice

providing for the holding of an Employer-called disciplinary hearing with employees on the active payroll, the Employer's calling of a disciplinary hearing otherwise, is unclear in its application to phl employees, who are not on the active payroll (as defined in the strike settlement agreement), and who are thus neither actively employed, or working in the plant. Whether they are subject to an Employer-called disciplinary hearing is simply not specifically referenced by the contract, nor by the strike settlement agreement.

Assuming that Young's determined effort to arrange such a hearing with Langemeier in the circumstances of this case was arguably within contract term and/or the prior practice of the parties, e.g., as a reasonably implied extension thereof by virtue of operation and applicability of other provisions of the contract, I am still persuaded to Union view that the same principle of reasonable contractual party intendments would also require Employer to take into account the making of accommodations shown reasonably necessary for a phl employee who was not actively employed by Employer, particularly if employed elsewhere, and especially if also advising of postal service difficulties.

In comparison the contract normally provided for 14 days response for an employee being recalled from layoff. Even the settlement agreement with its provisions for a 72-hour recall of employees on a preferential hiring list always excluded any intervening Saturday, Sunday and holiday along with making general provision for additional time where reasonably warranted. In the absence of the parties' agreement on terms of specific notice to be provided phl employees on a disciplinary hearing I conclude and find Employer was required to provide Langemeier with either a mutually agreeable hearing date, or a reasonable notice thereof that took into full and fair account Langemeier's declared difficulties in participating in such a meeting. The fact that Employer was probably right that Langemeier wasn't anxious to have the meeting held is no substitute for that requirement of reasonable accomodation.

This does not mean however that I am convinced that Young has thereby harassed Langemeier by involving Langemeier in this long correspondence of record, though always providing him with too short a notice. Rather, it is clear to me that Langemeier was a willing tester of Young's perseverance in his attempt to arrange a mutually agreeable date for the hearing on the matter. E.g., Langemeier at the outset offered no suggestion of his own for some longer term alternative hearing date, that would have served his claimed longer notice requirements. However accurate, it is no answer for Langemeier to assert as he did at hearing that it was not up to him to arrange the meeting, and then to complain to the Union, or assert in support of General Counsel allegation herein, that Employer was unlawfully hounding (harrassing) him for such a meeting.

The fact of the matter is Young was trying to arrange a meeting under unclear terms of the contract and/or practice, and Langemeier was not assisting him in doing so. Employer correctly observes that Langemeier wasn't anxious for the holding of this Employer-called disciplinary hearing, because he knew what was going to happen.

To be sure, as General Counsel has noted Langemeier always responded to a Young letter, usually timely; and on occasion when in direct oral communication with Young, Langemeier agreed to meet with Young on mutually agreeable dates. But the fact of record is also clear, that Langemeier wasn't anxious for the holding of any meeting, hearing, or disciplinary hearing. He did not cooperate as much as he could have easily done in arranging more expeditiously for it. Accordingly, I conclude and find that to the extent the complaint has alleged that Young has harassed Langemeier in pursuit of a hearing, one reasonably shown provided for under the parties contract and/or practice, the same should be dismissed, as was the February 26 letter's addressment to the boycott sticker, as being without merit.

There remains only to briefly consider the issues related to the prior settlement agreement in Cases 17–CA–12789 and 17–CA–12828. The General Counsel has argued in brief that the above settlement agreement must be set aside. In that regard the General Counsel has accurately stated the Board rule to be that the General Counsel may set aside a settlement agreement and prosecute the underlying offenses as if settlement never occurred, only if it can be established that following execution of a settlement agreement, Respondent either failed to comply with its specific terms or that it engaged in subsequent unfair labor practices, which, in general terms it agreed to avoid, *Middle Earth Graphics*, 283 NLRB 1049, 1057 (1987).

It is General Counsel's position that if it is determined that Langemeier's May 26, 1987 discharge is violative of Section 8(a) (1), (3), or (4) of the Act then Hormel has committed a postsettlement unfair labor practice which it agreed to avoid and the settlement agreeent must be revoked, and relatedly urges that all the underlying alleged unfair labor practices then be found on the evidence presented herein.

Essentially, I view the matter of Board approval of the setting aside of settlement agreement as fundamentally a matter being addressed to the discretion of the Board. In the unique circumstances of the findings in this case I do not agree that the settlement agreement should be set aside. Accordingly, I shall recommend that the Board reinstate the settlement agreement applicable to the remaining (earlier) complaint allegations for these reasons.

Although Young had grounds to in good faith believe that Langemeier had engaged in certain unlawful boycott activity, I have found above that the evidence predominates in establishing, and I have resultingly centrally concluded and found, that Employer fired Langemeier for boycott misconduct on March 14 that Langemeier in fact did not engage in, and slnce the conduct charged arose out of union and/or other protected concerted activity, Employer's discharge of Langemeier on May 26 violated Section 8(a)(1) of the Act, *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). I have otherwise found that General Counsel's postsettlement evidence will not support finding that Employer had discriminatorily discharged Langemeier in violation of Section 8(a)(3), or 8(a)(4) of the Act. Moreover, I have found that the weight of record evidence does not warrant finding that Employer independently violated Section 8(a)(1) in any of the Postsettlement particulars alleged in this complaint.

The only violation found is that despite Employer's good-faith belief to the contrary, the May 26, 1987 discharge of Langemeier violated Section 8(a)(1) on the basis of *Burnup & Sims*, supra, around which the litigation herein centrally flowed. An adequate remedy for that violation is readily available. The unfair labor practices underlying the settlement agreement occurred in 1985, at a time when there was

great economic strain operating on the parties, which is now well advanced in an ameliorating collective-bargaining process; and the alleged unfair labor practices covered by the setlement agreement were previously adjusted by the parties, and fully remedied in a period closer to their occurrence.

Under these unique circumstances, a reopening of those matters at this time, it seems to me, would not appear to contribute to the purposes of the Act to foster industrial peace; and accordingly it will be recommended that the settlement agreement be reinstated in regard to the remaining outstanding matters. However in the event I am in error in the above, I would find each of the underlying violations alleged as there is a clear preponderance of credible evidence shown above to support the findings.

CONCLUSIONS OF LAW

1. Geo. A. Hormel & Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers International Union, Local Union No. 22 is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging its employee Robert W. Langemeier on May 26, 1987, in good-faith belief that Langemeier had engaged in unprotected boycott activity, but at a time when Langemeier was not engaged in unprotected boycott activity but rather engaged in conduct that grew out of union, and other protected concerted activity, Respondent Geo A. Hormel & Company has violated Section 8(a)(1) of the Act.

4. In the unique circumstances of this case it would appear to best effectuate the purpose of the Act to reinstate the settlement agreement in Cases 17–CA–12789 and 17–CA–12828.

5. Respondent Geo. A. Hormel & Company has not otherwise violated the Act as alleged herein.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having wrongfully discharged its employee Robert W. Langemeier, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

As the record reveals that Langemeier was the first name on the Freemont preferential hiring list at the time of his discharge on May 26, 1987, and that all the unrecalled strikers on Freemont preferential hiring list were first called back to work on July 20, 1987, Langemeier's beginning make-whole date shall be July 20, 1987.

An appropriate notice for posting to employees will be provided.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Geo. A. Hormel & Company, Freemont, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging any employee for engaging in union, and other protected concerted activity in violation of Section 8(a)(1) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert W. Langemeier immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify Robert W. Langemeier in writing that this has been done and that the discharge will not be used against him in any way.

(c) Post at its facility in Freemont, Nebraska copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the settlement agreement in Cases 17–CA–12789 and 17–CA–12828 be reinstated and that no further proceedings be undertaken in connection therewith.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not otherwise specifically found herein.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in union, and other protected concerted activity in violation of Section 8(a)(1) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Robert W. Langemeier immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and we will make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to discharge and that the discharge will not be used against him in any way.

GEO A. HORMEL & COMPANY